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SUPERIOR COURT OF CALIFORNIA

COUNTY OF EL DORADO

STATE OF CALIFORNIA,

Plaintiff,

Vs.

RICHARD HAMLIN,

Defendant.

/

CASE NO.: P05CRF0161

NOTICE OF MOTION AND MOTION OF OBJECTION TO SENTENCE ON GROUND OF CRUEL OR UNUSUAL PUNISHMENT
Hearing Date: 6-23-06
Hearing Time: 1:30 p.m.
Department: 2

TO: GARY LACY, DISTRICT ATTORNEY OF EL DORADO COUNTY:

NOTICE IS GIVEN that on the date and time above-noted, or as soon thereafter as the matter may be heard, in the above-noted department of the above-entitled court, defendant RICHARD HAMLIN will object to the court imposing a life sentence for Count I, a violation of Penal Code Section 206, torture.

The motion/objection will be made on the grounds that:

1. The imposition of that sentence would violate the protection against cruel or unusual punishment as guaranteed by Article I, Section 17 of the California

Constitution; and

2. The imposition of that sentence would violate the protection against cruel or unusual punishment as guaranteed by the Eighth Amendment to the United States Constitution.

This motion is based on this notice of motion, the attached memorandum of points and authorities, the attached exhibits, the transcript of the grand jury proceedings, the transcript of the trial, all pleadings, records and files herein, and on such oral and documentary evidence as may be presented at the time of the hearing.

Dated: April 28, 2006.

Robert Banning

ROBERT BANNING
Attorney for Defendant

I

STATEMENT OF FACTS

In the above-entitled case, Mr. Hamlin was charged with 18 felony counts. In six of those counts, felony sentencing enhancements were attached. A jury trial was held in Department 2 of the Superior Count of California, County of El Dorado, before the Honorable Eddie T. Keller. Upon completion of the trial, the case was sent to the jury to decide the 18 felony counts, six enhancements, and three lesser-included misdemeanors.

The Court required the prosecution to make an election as to what alleged conduct constituted the bases of Counts 5 through 18. The Court memorialized the prosecution's elections in answering Jury Question #9 (a copy of the question is attached as Exhibit #1). The Court's response specifically set forth what specific acts must be proved as to each count.

The jury returned the following verdicts on January 10, 2006:

As to Count 10, not guilty of Penal Code Section 245, assault with a deadly weapon. The plaintiff argued as to this count that Mr. Hamlin used a sword to nearly cut off Ms. Hamlin's finger.

As to Count 11, not guilty of Penal Code Section 422, making criminal threats, and Penal Code Section 12022(a), being armed with a firearm. The prosecution argued that Mr. Hamlin slept with Ms. Hamlin at his side while holding a gun and making the threat that if she moved he would shoot her.

As to Count 12, not guilty of Penal Code Section 236, false imprisonment by use of force or violence, and Penal Code Section 12022(a), being armed with a firearm. The prosecution argued that Mr. Hamlin kept Ms. Hamlin in their bedroom at gunpoint.

As to Count 18, not guilty of Penal Code Section 245(a)(1), assault with a deadly weapon. The prosecution argued that Mr. Hamlin struck Ms. Hamlin with a stick and a pipe.

As to Count 16, not guilty of Penal Code Section 246.3, discharge of a firearm in a grossly negligent manner. The prosecution argued and the law requires that the discharge was grossly negligent and was done in such a manner "which could result in injury or death to a person".

As to Count 7, not guilty of Penal Code Section 273.5, spousal abuse. The prosecution argued that Mr. Hamlin beat Ms. Hamlin while Mark Steenberg was visiting their home. Ms. Hamlin testified that she screamed, "Help me, help me!" because Mr. Hamlin was beating her in the master bedroom. Mr. Steenberg in fact heard Ms. Hamlin yell, "Help me, help me".

As to Count 8, not guilty of Penal Code Section 236, false imprisonment by use of force or violence. The prosecution argued that while Mark Steenberg was visiting their home, Mr. Hamlin forcibly restrained Ms. Hamlin in their bedroom after Mr. Hamlin supposedly beat her.

As to Count 9, guilty of Penal Code Section 273.5, spousal abuse, but found that Mr. Hamlin did not personally inflict great bodily injury on Ms. Hamlin. The prosecution argued that great bodily injury was inflicted by Mr. Hamlin by breaking Ms. Hamlin's ribs.

As to Count 17, guilty of Penal Code Section 273.5, spousal abuse, but found that Mr. Hamlin did not personally inflict great bodily injury on Ms. Hamlin. The prosecution argued that

great bodily injury was inflicted by Mr. Hamlin by breaking Ms. Hamlin's nose.

As to Count 5, Penal Code Section 245(a)(1), assault by means of force likely to produce great bodily injury, the jury was deadlocked. This count has been dismissed. The prosecution argued that Mr. Hamlin threw Ms. Hamlin head first into a file cabinet, leaving the cabinet dented, then thrown into shelves, cutting Ms. Hamlin's back and causing her to bleed. The prosecution argued that Mr. Hamlin then beat Ms. Hamlin in the head and face area as she tried to call 911.

As to Count 14, Penal Code Section 245(a)(1), assault with a deadly weapon while personally using a firearm pursuant to Penal Code Section 12022.5(a), the jury was deadlocked. This count has been dismissed. The prosecution argued that Mr. Hamlin took Ms. Hamlin into a dark field and put a gun in her mouth.

As to Count 15, Penal Code Section 422, making a criminal threat while personally using a firearm pursuant to Penal Code Section 12022.5(a), the jury was deadlocked. This count has been dismissed. The prosecution argued that Mr. Hamlin took Ms. Hamlin into a dark field and, after pointing a gun at her, asked her if she was "ready to die".

As to Counts 2, 3, and 4, not guilty of Penal Code Section 273a(a), felony child endangerment. The jury found Mr. Hamlin guilty of three violations of Penal Code Section 273a(b), a

lesser-included offense of misdemeanor child endangerment. In so finding, the jury rejected the felony requirement that Mr. Hamlin performed acts "that likely could produce great bodily harm of death". The misdemeanor findings meant that the children were subjected to mental suffering.

POINTS AND AUTHORITIES

II

THE UNITED STATES AND CALIFORNIA CONSTITUTIONS PROHIBIT CRUEL OR UNUSUAL PUNISHMENT

Art. I, Section 17 of the California Constitution provides that "(c)ruel or unusual punishment may not be inflicted, or excessive fines imposed."

The California Supreme Court has established the following test to determine the constitutionality of a sentence under Art. I, Section 17:

> To determine whether a sentence is cruel or unusual as applied to a particular defendant, a reviewing court must examine the circumstances of the offense, including the defendant's motive, the extent of the defendant's involvement in the crime, the manner in which the crime was committed, and the consequences of the defendant's age, prior criminality and mental capabilities. (People v. Hines (1997) 15 C4th 997, 1078.) If the court concludes that the penalty imposed is "grossly disproportionate to the defendant's culpability" (People v. Dillon (1983) 34 C3d 441, 479) or, stated another way, that the punishment shocks the conscience and offends fundamental notions of human dignity (see, e.g., People v. Cox (1991) 53 C3d 618, 690), the court must invalidate the sentence as unconstitutional." (People v. Cox (2003) 30 C4th 916, 969-970.)

In Solem v. Helm (1983) 462 U.S. 277, the defendant was charged with passing a $100 check on a closed account. Helm had previously been convicted of six nonviolent felonies. The United States Supreme Court stated, "as a matter of principle...a criminal sentence must be proportionate to the crime for which the defendant has been convicted." (Id. at p. 290.)

The Supreme Court adopted a three part test to determine proportionality. "(A) court's proportionality analysis under the Eighth Amendment should be guided by objective criteria, including (i) the gravity of the offense and the harshness of the penalty; (ii) the sentences imposed on other criminals in the same jurisdiction; and (iii) the sentences imposed for commission of the same crime in other jurisdictions." Solem v. Helm supra, at page 292.

Applying this test, the Supreme Court held that Helm's sentence was "significantly disproportionate to his crime, and is therefore prohibited by the Eighth Amendment." (Id. at p. 303.)

A.

THE COURT'S REVIEW OF MR. HAMLIN'S SENTENCE IS NOT DISCRETIONARY BUT RATHER IT IS CONSTITUTIONALLY MANDATED

This Court must review Mr. Hamlin's sentence to determine if it is cruel or unusual pursuant to the Eighth Amendment to

the United States Constitution and pursuant to Art. I, Section 17 of the California Constitution.

This review is not discretionary and the court is not bound by the Legislature's creation of a Penal Code. In fact, the court is the check and balance which ensures the Legislature has not exceeded its constitutional limitations and separately that the application of the Legislature's intent has not violated constitutional limitations.

In In re Lynch (1972) 8 C3d 410, the California Supreme Court stated,

> Yet Legislative authority remains ultimately circumscribed by the Constitutional provision forbidding the infliction of cruel or unusual punishment adopted by the people of this state as an integral part of our Declaration of Rights. It is the difficult but imperative task of the judicial branch, as co-equal guardian of the Constitution, to condemn any violation of that prohibition. As we concluded in People v. Anderson (1972) 6 C3d 628, 640, 'The Legislature is thus accorded the broadest discretion possible in enacting penal statutes and in specifying punishment for crime, but the final judgment as to whether the punishment it decrees exceeds constitutional limits is a judicial function.'

The Court emphasized the need to protect individual constitutional rights even if that is not the will of the majority. The Court in In re Lynch, supra, at page 415, stated it does not conduct Eighth Amendment reviews "eagerly" but recognizes the importance of such reviews.

> We add that the determination of whether a Legislatively prescribed punishment is constitutionally excessive is not a duty which the courts eagerly assume or lightly discharge..

However, the Court went on to say at page 415, if it found such a constitutional violation,

> We must forthrightly meet our responsibility to ensure that the promise of the Declaration of Rights is a reality to the individual. As our chief Justice recently explained, by observing this cautious, often burdensome and sometimes unpopular procedure, the Courts can often prevent the will of the majority from unfairly interfering with the rights of the individuals who, even when acting as a group, may be unable to protect themselves through the political process. In this way, judicial review assures a government under the laws.

In Bixby v. Pierno (1971) 4 C3d 130, the Court stated,

> The cruel or unusual punishment clause of the California Constitution, like other provisions of the Declaration of Rights, operates to restrain legislative and executive action and to protect fundamental individual and minority rights against encroachment by the majority. It is the function of the court to examine legislative acts in light of such constitutional mandates to ensure that the promise of the Declaration of Rights is a reality to the individual.

The California Supreme Court's position on this issue appropriately follows the U.S. Supreme Court's position,

> Speaking of the Eighth Amendment to the United States Constitution, the United States Supreme Court declared: 'While the State has the power to punish, the Amendment stands to assure that this power be exercised within the limits of civilized standards.' (Trop v. Dulles (1958) 356 U.S. 86, 100.) The cruel or unusual punishment provision of the California Constitution serves an identical purpose. The Legislature is thus accorded the broadest discretion possible in enacting penal statutes and in specifying punishment for crime, but the final judgment as to whether the punishment it decrees exceeds constitutional limits is a judicial function. (Weems v. United States (1910) 217 U.S. 349, 379.)

B.

THE EIGHTH AMENDMENT PROHIBITION AGAINST CRUEL AND UNUSUAL PUNISHMENT INCLUDES EXCESSIVE SENTENCES

In In re Lynch, supra, the California Supreme Court, in coming to its decision, cited decisions of the United States Supreme Court, starting at page 422,

> The decisions of the United States Supreme Court are replete with assertions that one of the primary functions of the cruel and unusual punishment clause is to prevent excessive or unnecessary penalties; these punishments are unconstitutional even though popular sentiment may favor them.

The Court concluded with its position, at page 424,

> We conclude that in California a punishment may violate article I, section 6, of the Constitution if, although not cruel or unusual in its method, it is so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity.

Case law is replete with examples of the Court making such a determination. In In re Lynch, supra, the California Supreme Court found that a life sentence for a second offense of indecent exposure was so disproportionate to the crime and to the conduct of the defendant in question that it violated the California and United States Constitutions' prohibitions against cruel and unusual punishment.

Of note in Lynch, was the process the Court took to arrive at its conclusion. It first compared the life sentence for indecent exposure with punishments for other crimes. The Court in Lynch compared the life sentence for indecent exposure to

manslaughter, assault with intent to commit murder, kidnapping, and assault on a peace officer, as examples of offenses which were at least as serious and often more so and yet received a significantly lesser penalty.

The Court also looked at the accused in his case and made a determination that the punishment did not fit a person with his background and the facts surrounding his offense.

The Court in Lynch cited several examples of other Courts' finding a disproportionate sentence in violation of the prohibition against cruel and unusual punishment.

In Workman v. Commonwealth (Ky. 1968) 429 S.W.2d 374, a sentence of life imprisonment without the possibility of parole for rape committed by juveniles.

In Cannon v. Gladden (1955) 203 Or. 629, a sentence of life imprisonment for assault with intent to commit rape.

In Dembowski v. State (1968) 251 Ind. 250, a 25 year maximum indeterminate sentence for robbery.

In State v. Kimbrough (1948) 212 S.C. 348, a sentence of 30 years at hard labor for burglary.

In People v. Lorentzen (1972) 387 Mich. 167, a mandatory minimum sentence of 20 years for selling marijuana.

In State v. Ward (1970) 57 N.J. 75, a punishment of 2 to 3 years imprisonment for possession of marijuana where the defendant was a youthful first time offender.

In Solem v. Helm (1983) 463 U.S. 277, the Supreme Court ruled that "the Eighth Amendment proscription of cruel and unusual punishments prohibits not only barbaric punishment but also sentences that are disproportionate to the crime committed."

The Court ruled that even though a state is justified in punishing a recidivist more severely than it punishes a first offender, life without the possibility of parole imposed upon a defendant who was convicted for passing a $100.00 check on a closed account and who had three prior convictions for third degree burglary, one prior conviction for obtaining money under false pretenses, one prior conviction for grand larceny, and one conviction for third degree driving under the influence constituted cruel and unusual punishment.

In People v. Dillon (1983) 34 C3d 441, the defendant who was 17 years old, was convicted of felony first-degree murder and attempted robbery. The Court found that the circumstances surrounding the defendant and the commission of the crime were such that it was a violation of the prohibition against cruel or unusual punishment. The defendant wanted to rob the victim's marijuana farm. After two unsuccessful attempts the defendant and several co-defendants returned armed with the intent to rob the farm. The defendant knew that the owners of the farm were armed so he brought a semi-automatic rifle and intended to "hold him up", "hit him over the head", and "tie him to a tree". The

defendants brought guns, baseball bats, sticks, knives, and various tools. The victim became aware of the defendants' presence due to the defendant's discharging their shotguns. When the victim approached the defendant, the defendant shot the victim nine times, killing him.

The Court found that the imposition of the statutorily prescribed penalty of life imprisonment as a first degree murderer violated the prohibition against cruel or unusual punishment under the circumstances presented. The Court relied on the defendant being unusually immature for his age, that he had no prior trouble with the law, and that "he was not the prototype of a hardened criminal who posed a grave threat to society."

In addition, the Court noted, "the shooting at issue was a response to a suddenly developing situation that the defendant perceived as putting his life in danger. Against this showing of attenuated individual culpability was the massive loss of liberty entailed in a life sentence...". The Court concluded that it would find the defendant subject to punishment as a second degree murderer.

The Court in coming to its decision followed the rationale and guidelines set forth in Lynch, supra. The Court in Dillon also followed Lynch by citing several examples in other cases where the punishment was disproportionate and in violation of the prohibition against cruel or unusual punishment.

In In re Foss (1976) 10 C3d 910, the Court struck down legislation barring recidivist narcotics offenders from being considered for parole for ten years.

In In re Reed (1983) 33 C3d 914, the Court invalidated the statutory requirement that persons convicted of misdemeanor public lewdness must register with police as sex offenders. In Reed the Court placed great weight on the background of the defendant in deciding that the application of the penalty was cruel or unusual. The Court found that the defendant "had served for 21 years in the U.S. Air Force, was steadily employed and had no prior arrest record and we concluded that he is not the prototype of one who poses a grave threat to society."

In People v. Vargas (1975) 53 Cal.App.3d 516, People v. Ruiz (1973) 49 Cal.App.3d 739, and People v. Malloy (1974) 41 Cal.App.3d 944, the Courts struck down excessively high minimum parole provisions as being cruel or unusual punishments.

In People v. Keogh (1975) 46 Cal.App.3d 919, the Court found that the indeterminate life-maximum sentence grossly disproportionate to defendant's crimes of four counts of forged checks totaling less than $500.00.

In Enmund v. Florida (1982) 458 U.S. 782, the defendant's two co-defendants robbed and fatally shot an elderly couple. The defendant's sole involvement was as a getaway driver. Nonetheless, the jury found the defendant guilty of being a constructive aider and abettor and, hence, a principal in the

commission of a first degree felony murder. The defendant was sentenced to death. The Court stated that, "The focus must be on his (the defendant's) culpability, not on that of those who committed the robbery and shot the victims.... Enmund's criminal culpability must be limited to his participation in the robbery and his punishment must be tailored to his personal responsibility and moral guilt."

These cases stand for the rule of law that the United States and California Constitutions' prohibition against cruel and unusual punishment applies to excessive punishment. These cases further display that even though a Penal Code provision is not cruel and unusual on its face, the application of the statute in given cases can violate this constitutional protection.

In all of the cases cited, a Penal Code section was created to prohibit undesirable and criminal conduct. These Penal Code sections were passed by the Legislature or by the vote of the people. These Penal Code sections were deemed to be the will of the people and most, as a general rule, passed constitutional muster.

However, in these specific cases, the application as to the defendant's conduct in that case was found to be cruel and unusual punishment and thus impermissible.

These cases refute the notion that the Court should blindly follow and impose an excessive sentence because a Penal Code

section so instructs. The Court is not bound to impose an unjust sentence. In fact, the Court is required to protect against such a result.

These cases stand for the proposition that the Courts, through a cruel and unusual punishment review, are a necessary check and balance to protect the individual against a constitutionally prohibited excessive penalty.

III

IN THIS CASE, THE IMPOSITION OF A LIFE TERM OF IMPRISONMENT WOULD VIOLATE MR. HAMLIN'S CONSTITUTIONAL PROTECTION AGAINST CRUEL AND UNUSUAL PUNISHMENT

It is the defense's position that sentencing Mr. Hamlin to life in prison is so excessive in relation to his conduct that it is cruel and unusual punishment and thus prohibited by the United States and California Constitutions.

The defense will request this Court come to this conclusion by following the guidelines and factors set forth by United States and California Supreme Court case law (Solem v. Helm (1983) 462 US 277; In re Lynch (1972) 8 C3d 410).

A

THE GRAVITY OF THE OFFENSE AND THE HARSHNESS OF THE PENALTY

In Solem, supra, the United States Supreme Court set forth three criteria to guide its decision as to whether a punishment

was so excessive as to be cruel and unusual punishment. The first criterion listed:

1) The gravity of the offense and the harshness of the penalty.

The Court stated at page 278,

> Courts are competent to judge the gravity of an offense at least on a relative scale. Comparison can be made in light of the harm caused or threatened to the victim or to society and the culpability of the offender.

In addressing this criterion the defense will examine what Penal Code Section 206, torture, was intended to prohibit and what Mr. Hamlin actually was convicted of.

Section 206, torture, was created to punish the most violent conduct, short of murder, not covered by other Penal Code sections. People v. Barrera (1993) 14 Cal.App.4th 1555 stated that section 206 was intended "to fill a gap in existing law dealing with extremely violent and callous criminal conduct."

Section 206, torture, was not intended to punish conduct already covered by Penal Code Sections 245 (assault with a deadly weapon or by force likely to produce great bodily injury), 273.5 (spousal abuse), and their corresponding enhancements. Clearly the Legislature intended to outlaw more egregious and violent conduct. The intent is evident by the imposition of the most severe punishment of life in prison.

In order to understand the legislative intent, this Court should examine the case that gave birth to the torture statute.

The crime of torture was codified in 1990 in California after the passage of Proposition 115 because a man named Lawrence Singleton fell through the cracks of the justice system. The crime that Singleton committed generated international anger.

> Singleton picked up a fifteen-year old hitchhiker, Mary Vincent. Singleton kidnapped, raped and sodomized her. Then Singleton cut the ropes from her hands. He took a hatchet and chopped off Mary's left hand, then her right. He threw her over the side of the road, climbed down, shoved her into a drainage culvert and told her she was free. Mary made her way out of the culvert after Singleton left and after hours of wandering was discovered and given medical aid. She was hospitalized for one month. (People v. Singleton (1980) 112 Cal.App.3rd 418.)

The public was outraged at the sentence Singleton received. He was sentenced to 14 1/3 years in state prison. In 1987 Singleton was paroled after serving just more than half his sentence. He ended up living in a trailer on the grounds of San Quentin Prison because no community wanted to accept him as a parolee. After his release from parole, Singleton moved to Florida. In 1998, a jury in Tampa convicted him of murdering a mother of small children who worked as a prostitute. He had stabbed the 31-year old woman to death in his residence and he received the death penalty for this murder. Waiting for the sentence to be carried out, he died in prison of cancer in 2001.

A survey of published Penal Code Section 206, torture, cases reveals that the vast majority of the initial filings were

consistent with the statute's legislative intent, to punish extreme violence not covered by existing Penal Code sections.

In People v. Hale (1999) 75 Cal.App.4th 94, the defendant broke into the victim's home and entered her bedroom as she slept beside her 3-year old daughter. The defendant struck the victim twice in the face with a ballpeen hammer as she slept. The victim suffered numerous broken teeth, numerous chipped teeth, a cut lip that required stitches, and cuts on her face which required stitches. The victim, due to these injuries, had to have a root canal, teeth extracted, and bridge work. After the defendant inflicted the injuries he stayed to watch her pain and terror and then left.

In People v. Baker (2002) 98 Cal.App.4th 1217, the defendant poured gasoline over his wife and set her on fire. The victim suffered second and third degree burns that required skin grafts, infected lungs, and disfigurement. After the defendant set the victim ablaze, he stayed to watch her burn.

In People v. Lewis (2004) 120 Cal.App.4th 882, the defendant beat the victim with an aluminum bat for two hours. The victim suffered a collapsed lung, broken femur, broken patella, broken ribs and a concussion. The victim was hospitalized for 2 ½ weeks, where she had a tube put in her lung and a rod in her leg.

These cases are just a few examples of the "Singleton"-type conduct the Legislature intended to punish with the maximum penalty of life imprisonment.

However, a very disturbing trend has been growing in frequency in the last few years. Prosecutors have been unfairly using Penal Code Section 206 in cases where the defendant's conduct falls well short of "Singleton"-type conduct and is appropriately covered by existing Penal Code sections. Although the Legislative intent was clearly stated, the written requirements for section 206, torture, were poorly and vaguely assembled.

The Legislature wanted to punish the most violent offenders who committed extreme violence. They wanted to stop the Larry Singletons of the world. The Legislature determined that these most violent offenders qualified for the most severe of prison sentences---life. However, when section 206, torture, was created, it was immediately attacked for its vague and overbroad "definition" of torture.

The concern was that the overbroad language in section 206 could allow prosecutors to abuse their discretion in filing a torture charge in a situation that clearly was not intended. Very quickly, it became apparent that torture with its life term could be used in a case in which the defendant's conduct was in violation of Penal Code Sections 245 (assault by means of force

likely to produce great bodily injury) and 273.5 (spousal abuse).

Now as a result, conduct which would have been punished by 2, 3, or 4 years in state prison pursuant to sections 245 or 273.5 could be punished by life in prison by charging torture.

The miscarriage of justice is that the filing of Penal Code Section 206, torture, in those instances was not because the defendant's conduct was so extreme or more egregious than what sections 245 or 273.5 prohibited, rather, the filing occurred because section 206's "definition" of torture was so overbroad and vague.

Clearly, the intent of the Legislature was not to turn Penal Code Section 245 or Penal Code Section 273.5 cases into offenses that carry a life term in prison. Yet, through abusive filings of Penal Code Section 206 in these cases, that is what is occurring.

Prosecutors have twisted the intent of the torture statute so that those committing domestic violence or spousal abuse can be charged with torture for crimes that simply do not rise to the level of the criminal intent and injury that Singleton committed.

The defense's concern and its contention that Penal Code Section 206, torture, is being improperly used by prosecutors in violation of the Legislative intent was shared by Justice McIntyre of the Court of Appeal, Fourth District.

In People v. Pre (2004) 17 Cal.App.4th 413, the defendant, who did not know the victim, choked the victim to the point of unconsciousness twice, fractured her cheek which caused dental problems, broke her ribs, injured an internal organ, damaged her little finger to the point it had to be amputated, and bit her ear so severely that it required 100 stitches.

Despite these injuries, which are far more sever than what the jury in this case found that Mr. Hamlin committed, Justice McIntyre felt that this was not a case that the Legislature intended to be filed as torture.

In fact, Justice McIntyre voiced the same concern that torture was being improperly used in cases where the defendant's conduct was covered by previously existing Penal Code section that carried significantly lesser punishments.

In the Pre case, despite the severity of the injuries to the victim, Justice McIntyre decided he did not want to impose the term of life for the crime of torture. Justice McIntyre explained his reluctance to impose a torture conviction in his dissenting opinion:

> I agree with the majority's analysis of Pre's contentions on appeal, except as to the sufficiency of the evidence to support the jury's finding that Pre acted with specific intent to cause cruel or extreme pain or that he acted for revenge, persuasion or any sadistic purpose. On this latter issue, I respectfully dissent.
>
> The crime of torture was codified in California in June 1990, when the California electorate passed Proposition 115 in response to the facts in People v. Singleton (1980) 112 Cal.App.3d 418. People v. Jung (1999) 71 Cal.App.4th 1036, 1044 (dis.opn. Armstrong, J.) In that

case, Singleton kidnapped and sexually abused his victim, then chopped off her hands and dumped her in a ditch in a remote location. He was later charged with and convicted of attempted murder, mayhem, kidnapping, and multiple sex crimes, which resulted in a sentence of fourteen years, four months in prison. Singleton was paroled after having served just seven years in prison and thereafter the new crime of torture was included in proposition 115 "to insure that crimes such as Singleton's receive a minimum punishment of life imprisonment". (Ibid., quoting *Sen Com. on Judiciary, Assem. Com. On Public Safety, Joint Hearing on Crime Victims Justice Reform Act* (1990) pt. 3, at p. 005.)

Penal Code Section 206 was not included to alter the existing legal definition of torture, but was codified to insure that conduct amounting to torture would be punished by no less than life in prison even in situations where the victim survives, as in Singleton. (People v. Barrera (1993) 14 Cal.App.4th 1555, 1564) The majority recognizes as much, noting that the adoption of Penal Code section 206 was intended "to fill a gap in existing law dealing with extremely violent and callous criminal conduct." (Maj.opn. p. 13, quoting People v. Barrera, supra, 14 Cal.App.4th at p. 1572)

Notwithstanding the original intent underlying the adoption of Penal Code Section 206, the application of the statute has expanded, by judicial accretion, to any assault in which the victim suffers "great bodily injury" where the jury infers an intent to inflict cruel and extreme pain, regardless of whether the assailant's conduct was extremely violent and callous. (See, e.g. People v. Hale (1999) 75 Cal.App.4th 94, 108 [holding that the crime of torture focuses on the mental state of the perpetrator, not on whether actual pain was inflicted]). Under such an application of the statute, virtually any aggravated assault proscribed by Penal Code Section 245 that results in great bodily injury may qualify as torture under Penal Code Section 206; if the jury infers the requisite intent from the defendant's conduct, the defendant will be subject to a life sentence rather than a two to four year sentence applicable to an aggravated assault conviction (Pen Code Section 245, subd (a), even if the crime was not particularly heinous and the injuries were not particularly substantial. This is not what the voters intended in passing Proposition 115. In my view, a part of our function as a reviewing court is to see that the law is applied in accordance with its purpose and the intent underlying it.

> As the majority opinion points out, our review of the Sufficiency of the evidence to support the jury's verdict is limited. However, I disagree with the majority's conclusion that this limitation precludes us from finding that a reasonable trier of fact could not have inferred the requisite specific intent from the circumstances of Pre's attack on Rose. In fact, no existing published case has recognized the crime of torture arising out of conduct similar to what Pre engaged in here. Without minimizing the nature of Pre's attack on Rose and recognizing that Pre's conduct may be viewed as somewhat unusual, I nonetheless conclude that the jury could not reasonably infer that Pre acted with the intent to cause cruel or extreme pain or for revenge, persuasion or any sadistic purpose from his conduct, which was neither "extremely violent and callous," nor comparable to that involved in Singleton. A reasonable juror could not infer from the circumstances surrounding his attack on Rose that Pre intended to inflict cruel or extreme pain. Characterizing Pre's actions against Rose as torture "redefine(s), and minimize(s), the gruesome and sadistic nature of torture, which has long been recognized as among the most heinous of human conduct..." (People v. Jung, supra, 71 Cal.App.4th at p. 1049 (dis. opn. Armstrong, J.)) For these reasons I would reverse Pre's convictions of torture.

The case against Mr. Hamlin may be the best example of the wrongful charging of torture and the miscarriage of justice that can result from a statute which is so overbroad.

A comparison should be made between the legislative intent of Penal Code Section 206 Singleton-type conduct and Mr. Hamlin's case. From the very beginning, the allegations against Mr. Hamlin constituted a spousal abuse and assault case. Even before the jury's verdicts, with the most extreme claims pending, a very strong argument could be made that this was not what the Legislature intended to punish with a life sentence.

However, after the jury's verdicts, there can be no doubt that this is absolutely not a "torture case" as intended by the Legislature.

Let us start from the beginning. Penal Code Section 206 was, as People v. Barrera, supra, stated, intended "to fill a gap in existing law dealing with extremely violent and callous criminal conduct".

The allegations brought against Mr. Hamlin were aptly covered by Penal Code Sections 245, 273.5, and the respective sentencing enhancements. Mr. Hamlin was facing extensive time in prison based on the 17 non-torture counts. Clearly there was not extreme, vicious conduct that was not covered by those Penal Code sections and the sentencing enhancements.

Basically, what the prosecution did was to utilize the overbroad language of Penal Code Section 206, torture, to charge Mr. Hamlin with an offense that covered the same allegations detailed in other counts. The benefit, of course, is that now the prosecution could attempt to expose Mr. Hamlin to life imprisonment as compared to a lesser determinate sentence mandated by Penal Code Sections 245 and 273.5.

The significance of this strategic filing is that the Legislature never intended for Penal Code Section 206 to be used as a duplicative filing which changes violations of Penal Code Section 245 and 273.5 into life imprisonment offenses. In this

case section 206 and sections 245 and 273.5 covered the same allegations.

This leads to the analysis of the significance of the jury's verdicts. The prosecution's specific allegations against Mr. Hamlin were resoundingly rejected by this jury. The miscarriage of justice results when despite Mr. Hamlin's successful defense of specific claims, a jury can convict on Penal Code Section 206, torture, which covered the same allegations as the specific charges, but is defined more vaguely and overly broad.

It is the defense's position that the manner in which Penal Code Section 206, torture, was filed against Mr. Hamlin did not reflect the intent of the Legislature.

Furthermore, and perhaps even more significant is that after the jury's verdicts and findings, the remaining evidence against Mr. Hamlin clearly was not what the Legislature intended to constitute torture.

Mr. Hamlin was found not guilty of inflicting great bodily injury both times it was alleged. Mr. Hamlin was found not guilty of striking Ms. Hamlin with a pipe and a stick, not guilty of cutting her with a sword, not guilty of beating her while a friend was in the home, not guilty of sleeping with Ms. Hamlin by his side while he held a gun, and not guilty of several other counts as well.

The question then becomes, what did Mr. Hamlin do that constitutes torture?

This Court is left with three counts of spousal abuse without any findings of great bodily injury. That leads us to an essential question: Is that what the Legislature intended when it created Penal Code Section 206?

Clearly the answer is no. Penal Code Section 206, torture, was meant to punish the Larry Singletons of this world. It was meant to punish conduct not covered by other Penal Code sections. It was meant to punish defendants who cut off the hands of a young child or a husband who lights his wife on fire. Thus, the punishment of life in prison. It was not meant to create a life sentence for spousal abuse.

B

COMPARING MR. HAMLIN'S CONDUCT AND PROPOSED SENTENCE OF LIFE WITH OTHER CRIMES AND PUNISHMENTS AS SET FORTH IN THE CALIFORNIA PENAL CODE

Pursuant to the guidelines set forth by the California and United States Supreme Court, this Court must compare Mr. Hamlin's proposed sentence of life with the sentences imposed on other defendants. As in Lynch, supra, the court's process was to compare the life sentence given to its defendant for indecent exposure with punishments for other crimes. The Court did not limit itself to a comparison within the same county for other criminal punishment but rather compared the indecent exposure

sentence to potential sentences as to other crimes as set forth in the California Penal Code.

Mr. Hamlin's proposed sentence is life. Yet, what is undeniable is that much more harmful conduct is punished with the same or less severity throughout the California Penal Code.

Second degree murder is punished with a 15 years to life sentence pursuant to Penal Code Section 190(c).

Gross vehicular manslaughter while intoxicated is punished with 4, 6, or 10 years in prison pursuant to Penal Code Section 191.5. This crime is the unlawful killing of a human being while driving under the influence and with gross negligence.

Gross vehicular manslaughter while intoxicated with a prior conviction for driving under the influence is punished with a 15 years to life sentence in prison pursuant to Penal Code Section 191.5(d).

Voluntary manslaughter is punished with 3, 6, or 11 years in prison pursuant to Penal Code Sections 192-193. This crime is the unlawful killing of a human being upon sudden quarrel or heat of passion.

Involuntary manslaughter is punished with 2, 3, or 4 years in prison pursuant to Penal Code Sections 192-193. This crime is the unlawful killing of a human being in the commission of an unlawful act done without due caution.

Vehicular manslaughter committed with gross negligence but not while intoxicated is punished with 2, 4, or 6 years in prison pursuant to Penal Code Sections 192-193.

Vehicular manslaughter committed without gross negligence is punished with up to one year in the county jail.

Vehicular manslaughter while intoxicated but without gross negligence is punished with 16 months, 2 or 4 years in prison pursuant to Penal Code Sections 192-193.

Mayhem is punished with 2, 4, or 8 years in prison pursuant to Penal Code Sections 203-204. This crime occurs when one maliciously deprives a human being of a member of his body, or disables, disfigures or renders it useless or cuts or disables the tongue or puts out an eye or slits the nose, ear, or lip.

Aggravated mayhem is punished with a 15 years to life sentence pursuant to Penal Code Section 205. This crime occurs when one causes permanent disability or disfigurement or deprives a human being of a limb, organ or member of his body.

Poisoning another is punished with 2, 4, or 5 years in prison pursuant to Penal Code Section 347(a).

Poisoning another with possibility of death or Poisoning that causes great bodily injury is punished with 2, 4, or 5 years in prison with an additional enhancement of 3 years, pursuant to Penal Code Section 347(a)(2).

Arson that causes great bodily harm is punished with 5, 7, or 9 years in prison pursuant to Penal Code Section 451(a).

Arson that causes great bodily injury to more than one person is punished with 5, 7, or 9 years in prison with an additional enhancement of 3, 4, or 5 years in prison pursuant to Penal Code Section 451.1.

Attempted murder is punished with 5, 7, or 9 years in prison pursuant to Penal Code Sections 664/187.

Attempted murder which was willfully planned, deliberate and with premeditation is punished with 15 years to life in prison pursuant to Penal Code Sections 664/187.

Based on the not guilty verdicts rendered by the jury in this case, Mr. Hamlin's "torturous" conduct was reduced to three counts of spousal abuse with no findings that he committed Great Bodily Injury. The one count of making a criminal threat and three counts of misdemeanor child endangerment do not constitute any evidence of torture against Ms. Hamlin. With that extremely limited unlawful conduct the proposed sentence is life in prison. This is despite the fact that Ms. Hamlin was not disabled or disfigured. She was not knocked unconscious and did not require stitches. She did require being checked into a hospital. Most importantly, she is alive and appears to be a healthy and thriving adult.

These facts are not intended to minimize the harm and physical pain she did suffer. But in comparing Mr. Hamlin's proposed sentence of life in prison with other statutes, the harm inflicted on victims of the previously listed Penal Code

Sections is much more damaging and many times punished less severely in other Penal Code Sections.

The bottom line question is, should Mr. Hamlin's conduct be punished to the same degree as someone who has committed second degree murder?

More shockingly, a defendant who unlawfully kills another human being often receives less incarceration time than Mr. Hamlin's sentence. One can kill another in a "sudden quarrel" or in the heat of passion and receive 3, 6, or 11 years in prison. The victim is dead. This is certainly not a comparable situation for Ms. Hamlin.

An individual can get into a vehicle under the influence, drive with gross negligence, and kill another human being yet receive 4,6, or 10 years in prison. It is only when the defendant kills another time while driving under the influence with gross negligence that he would receive the same punishment as Mr. Hamlin. Two people killed by the same defendant on two different occasions receives the same punishment as Mr. Hamlin whose conduct is basically committing spousal abuse with no great bodily injury.

These comparisons reveal clearly that a life sentence for Mr. Hamlin would be wrong and a gross miscarriage of justice. Simply put, there is no comparison between what Mr. Hamlin did and the aforementioned Penal Code violations.

A continued comparison of other crimes reveals another category of offenses where the criminal activity is more egregious than what Mr. Hamlin has done and yet is punished much less severely.

Kidnapping a human being is punished with 3, 5, or 8 years in prison pursuant to Penal Code Sections 207-208.

Kidnapping a child under the age of 14 is punished with 5, 8, or 11 years in prison pursuant to Penal Code Sections 207-208.

Robbery in the first degree is punished with 3, 4, or 6 years in prison pursuant to Penal Code Section 211-213.

Robbery in the second degree is punished with 2, 3, or 5 years in prison pursuant to Penal Code Section 211-213.

Carjacking is punished with 3, 5, or 9 years in prison pursuant to Penal Code Section 215.

Assault with the intent to commit mayhem, rape, sodomy, oral copulation, rape in concert with another, lascivious acts upon a child or penetration of genitals or anus with a foreign object is punished with 2, 4, or 6 years in prison pursuant to Penal Code Section 220.

Sexual battery is punished with one year in county jail or 2, 3, or 4 years in prison pursuant to Penal Code Section 243.4.

Shooting at an inhabited dwelling is punished with 3, 5, or 7 years in prison pursuant to Penal Code Section 246.

Assault with a machine gun is punished with 4, 8, or 12 years in prison pursuant to Penal Code Section 245(3).

Assault with a firearm upon a police officer is punished with 4, 6, or 8 years in prison pursuant to Penal Code Section 245(3)(d).

Rape is punished with 3, 6, or 8 years in prison pursuant to Penal Code Sections 261-264.

Gang rape (rape in concert by force or violence) is punished with 5, 7, or 9 years in prison pursuant to Penal Code Section 264.1.

Providing a child under the age of 16 to another for any lewd or lascivious act is punished with 3, 6, or 8 years in prison pursuant to Penal Code Section 266j.

Sodomy with a minor under the age of 18 is punished with one year in county jail of 16 months, 2 years, or 3 years in prison pursuant to Penal Code Section 286(b)(1).

Sodomy with a child under the age of 14 when the defendant is 10 years older than the child is punished with 3, 6, or 8 years in prison pursuant to Penal Code Section 286(c)(1).

Sodomy against a victim by force, violence, duress, menace or fear is punished by 3, 6, or 8 years in prison pursuant to Penal Code Section 286(c)(2).

Sodomy gang rape (in concert with another) is punished with 5, 7, or 9 years in prison pursuant to Penal Code Section 286(c)(1).

Child molestation, committing any lewd or lascivious act on a child less than 14 years old, is punished with 3, 6, or 8 years in prison pursuant to Penal Code Section 288(a).

Child molestation by use of force, violence, duress or fear of immediate bodily injury is punished with 3, 6, or 8 years in prison pursuant to Penal Code Section 288(b).

Child molestation, where the child is 14 or 15 years old and the defendant is 10 years older, is punished with 1, 2, or 3 years in prison pursuant to Penal Code Section 288(c).

Continuous sexual abuse of a child, where the defendant resides in the same home with the child or has recurring access to the child and commits three or more acts of substantial sexual conduct with a child under the age of 14 years, is punished with 6, 12, or 16 years in prison pursuant to Penal Code Section 288.5.

Sexual penetration against a victim's will by force, violence, duress or fear is punished with 3, 6, or 8 years in prison pursuant to Penal Code Section 289.

These cases are further evidence of how inappropriate it would be to sentence Mr. Hamlin to life in prison. A person who rapes receives 3, 6, or 8 years in prison. A defendant involved in a gang rape receives 5, 7, or 9 years in prison. Mr. Hamlin's spousal abuse conduct is punished by life in prison.

There is something clearly wrong if Mr. Hamlin's conduct mandates life but a child molester is punished with 3, 6, or 8

years in prison. Even in cases of an incestuous parent who is continuously sexually abusing his or her children, Penal Code Section 288.5 punishes with 6, 12, or 16 years in prison but not life.

One of the key factors that courts are instructed to consider in a cruel and unusual punishment review is whether the defendant's sentence is disproportionate to his conduct and the crime. The defense readily concedes that many torture convictions absolutely deserve a life sentence. Cases such as Larry Singleton deserve life. Singleton's conduct is worse than the listed statutes and deserves to receive more time in prison.

Singleton raped and sodomized a 15 year old girl, chopped of both her hands and left her for dead. Comparing Singleton's conduct with other Penal Code sections, such as robbery, rape, and child molest, does not help him at all. Such a comparison supports that Singleton's conduct was worse, justifying a more sever penalty. Even when comparing his conduct with other life term crimes, such as second degree murder and aggravated mayhem, his conduct justifies the same penalty.

Thus, the torture statute has served an honorable and just purpose. In cases such as People v. Hale, supra, in which the defendant struck the victim in the face with a ballpeen hammer as she slept, and People v. Baker, supra, in which the defendant lit his wife on fire, are great examples of the need for a torture statute.

However, Mr. Hamlin's conduct does not at all fall into that category. Mr. Hamlin is a victim of a statute that is overbroad and vague in its legal definitions and requirements. The intent of the Legislature in creating Penal Code Section 206 was good. The Legislature's finished product, Penal Code Section 206, was flawed, however. Due to section 206's overbroad and vague language, constitutionally impermissible application of this law can occur.

Such is the case with Mr. Hamlin.

Thus, in a case where clearly the defendant has not committed the type of egregious conduct of Singleton or Hale or Baker, a life sentence may be cruel and unusual punishment due to the disproportionality of the sentence as compared to the defendant's conduct. Perhaps one of the most objective standards to aid this Court in answering that issue is by comparing the defendant's conduct with the conduct prohibited by other Penal Code sections.

In Mr. Hamlin's case that objective analysis and comparison shows how disproportionate a life sentence is for Mr. Hamlin's conduct. Mr. Hamlin's conduct clearly does not rise to the level of other torture cases, does not rise to the level of other life imprisonment cases and does not even rise to the level of criminal conduct that is punished much less severely than a life term.

Mr. Hamlin's conduct is most accurately covered by the laws prohibiting spousal abuse. Penal Code Section 273.5, spousal abuse, Penal Code Section 243(d), battery with serious bodily injury, and Penal Code Section 245(a)(1), assault with intent too commit great bodily injury all punish with 2, 3, or 4 years in prison. In analyzing the overall sentencing scheme in California, that punishment seems to be an accurate measure for Mr. Hamlin's conviction.

C

COMPARING MR. HAMLIN'S CONDUCT AND THE PROPOSED SENTENCE OF LIFE IMPRISONMENT WITH OTHER CRIMES AND PUNISHMENTS IN THE SAME COUNTY

The proposal of life imprisonment for Mr. Hamlin's conduct is disproportionate with sentences given to other defendants in this county.

The case most factually similar to Mr. Hamlin's case which the El Dorado County District Attorney has filed in the last 2 ½ years is People v. Bennett (see Exhibit 2). The defendant allegedly slammed his girlfriend's head into the ground, slapped her in the face on numerous occasions, attempted to bind her hands and mouth with duct tape, doused her with cold water, ripped her clothes off, and threatened to kill her.

Bennett was 46 years old and a convicted felon. He and the victim had been together approximately 20 years and they had a child together. During the attack, Bennett accused her of

having an affair. Upon her denial he attacked her, throwing her to the ground. He then sat on her and slammed her head on the floor eight times and slapped her face 20 times. He tried to duct tape her mouth and did so to such an extent that she had difficulty breathing. When she tried to leave the residence, the defendant ripped off her clothes. She got redressed and he then doused her with water so she had to take those clothes off. The defendant then threatened to kill her and he had a loaded 12-gauge shotgun nearby on the couch. He again duct taped her. She broke free and ran up the driveway where the defendant tackled her. He again began to slam her head into the ground.

Witnesses, neighbors, saw Bennett drag the victim by the hair back into the house. As he dragged her he ripped off her clothes. Deputies arrived to find a trail of clothes and heard angry yelling, hoarse screaming and thumping noises coming from within the house. Deputies broke the door down and took Bennett into custody.

A search of Bennett's residence revealed that the ex-felon illegally had a shotgun, three rifles, an assault pistol, a Ruger pistol, a homemade silencer, ammunition and a homemade ball and chain mace with 7 spikes. There was also a Smith & Wesson handgun on the table.

Bennett was not charged with torture, but was charged with spousal abuse, kidnapping and being a felon in possession of a firearm.

Bennett and Mr. Hamlin are approximately the same age and married for approximately the same length of time. Bennett was a convicted felon and Mr. Hamlin was an attorney with no criminal record. The accusations against Mr. Bennett are similar to claims made against Mr. Hamlin.

Bennett was sentenced to one year in county jail, a Johnson year, after pleading guilty to spousal abuse and kidnapping. Mr. Hamlin, a first time offender, is facing life in prison.

People v. Nicholas Nugent was resolved in 2005. He was charged with torture, spousal abuse with great bodily injury, and kidnapping. Mr. Nugent had a prior record of criminal convictions and multiple cases of alleged physical abuse against the victim, his girlfriend.

The victim allegedly suffered serious injury and was hospitalized. Among the allegations was that the defendant hung the victim by her legs from a bridge and on another occasion kept throwing her into a river at night.

Nugent was allowed to plead guilty for a seven-year prison sentence. The torture charge was dismissed.

In People v. Griffin, the defendant got into a fight with the victim and beat him so badly that he could throw the victim in the back of his truck. The co-defendant beat the victim over the head with a level. The two defendants took the victim and threw him into a well and then threw rocks on him. The victim was murdered.

Griffin was allowed to plea to voluntary manslaughter for an eleven-year prison sentence. Griffin killed a human being and received a determinate sentence that will allow him to be free after approximately nine years.

In a pending El Dorado County case, People v. Wasserman, the defendant allegedly severely slashed his ex-girlfriend with a sword and violently abused her to such an extent that the victim was hospitalized for two months and required five surgeries. The defendant had a prior restraining order in place against him to protect his ex-girlfriend when this attack occurred. (See Exhibit 3.)

In People v. Ricky Davis, the defendant was convicted of second degree murder and received virtually the same sentence as that proposed for Mr. Hamlin. (See Exhibit 4.)

Further, Mr. Davis' co-defendant, Connie Dahl, pleaded guilty to manslaughter for her role in the murder but was only sentenced to one year in county jail and no prison time. (See Exhibit 5.) Both Davis and Dahl had criminal records.

In People v. Michael Pitts, the defendant was convicted of kidnapping a 9-year-old girl. The Chief Assistant District Attorney, Sean O'Brien, argued that if the little girl had not broken away from Pitts "she might have been seriously injured or killed". (See Exhibit 6.) Pitts had a federal conviction for child pornography and admitted to a Probation Officer that he had a "sexual interest in children."

Pitts was sentenced to 11 years in prison.

In People v. George Clink, the defendant pleaded guilty to the rape of a 14-year-old girl. He had a prior conviction for sexual intercourse with a 13-year-old girl. The Honorable Eddie T. Keller, Judge of the Superior Court, originally sentenced Clink to 9 months to be served in the California Rehabilitation Center. It did not work out and Judge Keller then attempted to get the defendant to participate in a drug rehabilitation program. When the defendant decided against the drug program he was sentenced to state prison for less than a year after including his good conduct credits. Clink had a significant criminal history as a juvenile. (See Exhibit 7.)

In People v. John Stockdale, the defendant was sentenced to 270 days after he pleaded to child molestation of his 13-year-old stepdaughter. (See Exhibit 8.)

In People v. Brian Hazen, the defendant was sentenced to 3 years in state prison after he pleaded guilty to molesting a young girl. (See Exhibit 9.)

In People v. Alex Nieto, the defendant was sentenced to 9 years in prison for numerous acts of molestation on two different girls, ages 14 and 11. (See Exhibit 10.)

In People v. Paul Phillip Green, the defendant was sentenced to no custody time after being convicted by a jury of

6 felony charges involving his shooting at individuals on his property. (See Exhibit 33.)

Green was convicted of assault with a firearm and other charges after he fired on individuals in two separate events. On one occasion the defendant actually shot at and hit one of the victims. The defendant shot more than a dozen bullets from two firearms during the January 10, 2005, event.

What these cases reflect is that Mr. Hamlin is not being treated in the same way as other defendants and his sentence is extremely disproportionate for what he was convicted of.

Besides Mr. Hamlin's case, the only other spousal abuse case for which torture was charged was in Mr. Nugent's case, and he was allowed to plead guilty to other charges for a 7-year sentence and the torture charge was dismissed. As to other cases that are factually similar to Mr. Hamlin's case, the prosecution does not ever charge torture. The best example of that is the Bennett case.

The inequity should be obvious when one sees that Mr. Hamlin faces a life term in state prison in a county in which Mr. Bennett received a Johnson year in county jail.

Instead, Mr. Hamlin will receive the same sentence as a second degree murderer (Ricky Davis) and more time than two defendants who murdered their victims and were allowed to plead guilty to manslaughter (Griffin and Dahl). This, even though

Ms. Hamlin, the complaining witness in this case, is alive and suffered no disabilities, disfigurements or long term injuries.

No matter what the comparison is, Mr. Hamlin's sentence is disproportionate. When comparing the degree of injury, the injuries in Nugent's case are more severe, and the same is true in Green's case, in which the defendant shot the victim. When comparing the backgrounds of the defendants, almost all of the defendants listed had prior felony convictions, while Mr. Hamlin had no criminal record and worked continuously since 6th grade.

The listing of child kidnapping and child molestation cases serves to compare conduct. The conduct of Pitts and the other child molest cases are arguably worse than the criminal conduct for which Mr. Hamlin was convicted. However, their sentences are significantly less than the proposed life term faced by Mr. Hamlin.

These examples are not the exceptions, this is the norm for El Dorado County sentencing practices. The defense is in no way criticizing the sentences given to these various defendants, but is simply asking for the same consideration and a sentence consistent with these other decisions. Such a departure in Mr. Hamlin's case is evidence of a disproportionality that makes Mr. Hamlin's sentence cruel and unusual.

D

COMPARING MR. HAMLIN'S CONDUCT AND THE PROPOSED

SENTENCE OF LIFE IN PRISON FOR "TORTURE" WITH OTHER TORTURE CASES IN JURISDICTIONS OUTSIDE EL DORADO COUNTY

Pursuant to United States and California Supreme Court case law, the defense has attempted to compare the same crime and conduct with jurisdictions outside of El Dorado County.

In looking for other counties or states in which conduct similar to Mr. Hamlin's has been charged as torture or punished with a life term in prison, there has been virtually no findings.

Beginning with other counties in California, Penal Code Section 206, torture, has been used overwhelmingly to punish "Singleton"-type conduct. Although some District Attorney Offices have exploited the overly broad and vague definition of Penal Code Section 206, torture, and used it in cases that were less than Singleton's, no cases have been located that have applied it to Mr. Hamlin's level of conduct. More pointedly, Penal Code Section 206, torture, is not being applied to cases where the offending behavior is so overwhelmingly defined by spousal abuse statutes. Thankfully, the majority of District Attorney Offices across the state is not trying to impose life in prison for conduct which is tantamount to domestic violence.

A good example of a typical case in which torture is charged, was just concluded in Sacramento County. On March 8, 2006, a jury convicted Daniel Harper of a variety of crimes which included torture pursuant to Penal Code Section 206. (See

Exhibit 11.) The 30-year-old defendant kidnapped the 52-year-old victim and kept her captive at knifepoint for four hours. The defendant forced the victim to commit sexual acts against her will and then drove her to a remote area. Harper then beat her into unconsciousness, slit her throat and set her on fire causing first and second degree burns over nearly a third of her body. The defendant, as in the Singleton case, left her for dead.

Penal Code Section 206, torture, was meant to punish Mr. Harper's conduct. There is no comparison between what Mr. Hamlin did, as decided by his jury, and what Mr. Harper did. Yet, the two men face the same penalty for their convictions for violating Penal Code Section 206.

Looking to other states, there is no other comparable statute that defines conduct such as Mr. Hamlin's as torture with a punishment of life in prison. Most often, conduct similar or worse than Mr. Hamlin's is punished much less severely.

A good example of such a case came from Mew York. Anthony Barone was sentenced to four years for torturing his wife in Long Island, just outside New York City, on May 20, 2006. (See Exhibit 12.)

The victim detailed a vicious and bizarre attack. She claimed that the defendant "beat and abused her terribly" and at one point the defendant kicked the victim in the face with a

steel-toed boot causing her to bleed profusely through her nose and mouth. The victim's nose was broken and as the beating continued she slipped in and out of consciousness. The victim testified that "this time I truly believed I would not survive the beating".

The defendant then stripped her of her clothes and chained her with a padlock to a stairwell in their basement. The defendant did this because of the victim's fear of the defendant's two illegal 30 pound leopards, which were kept in a room with access to the basement.

The defendant then cut off most of his wife's hair with a hunting knife. He proceeded to take her to his tattoo shop and tattooed his name on her to remind her "that she was his property".

The defendant returned the victim to his home where she was held against her will for 9 days.

The defendant was sentenced to four years in prison, a small fraction of Mr. Hamlin's proposed sentence of life in prison.

Perhaps the best comparison to show how disproportionate the proposed life sentence for Mr. Hamlin is can be found by examining how the federal courts and government are punishing "torture" cases.

The most notorious and offensive torture case arose from abuse inflicted by members of our armed forces on Iraqi

prisoners being held in Abu Ghraib at a United States military prison. Perhaps one of the best overviews of the soldiers' torturous conduct comes from "The New Yorker" magazine's issue of May 10, 2004. In that article (see Exhibit 13) much of the information came from a 53 page report obtained by "The New Yorker", written by Major General Antonio M. Taguba. The following facts came from that article and other news accounts of the soldiers' trials. Further evidence came from photographic evidence of actual abuse being perpetrated by members of our armed forces. (See Exhibits 14 through 27.)

The torturous conduct included sodomizing a detainee with a chemical light and broomstick, breaking chemical lights and pouring the phosphoric liquid on detainees, beating detainees with a broom handle and a chair, threatening male detainees with rape, allowing military guards to stitch the wound of a detainee after he was slammed against a wall in this cell, allowing military dogs to bite the detainees, sexual abuse, stressing detainees until they would lose consciousness, and daily beatings.

Two detainees were killed.

In addition to the physical abuse there was extreme dehumanization and psychological abuse. Photographs revealed GIs taunting naked Iraqi prisoners who were forced into humiliating poses.

Iraqi prisoners were forced to masturbate while another naked Iraqi knelt before them. Naked Iraqi men were forced to lay on top of each other to form naked pyramids. Naked prisoners were chained to bars or each other.

Such dehumanization is unacceptable in any culture, but it is especially so in the Arab world. Homosexual acts are against Islamic law and it is humiliating and a sin for men to be naked in front of another man, according to Bernard Haykel, a professor of Middle Eastern Studies at New York University:

> "Being put on top of each other and forced to masturbate, being naked in front of each other---it is all a form of torture," Haykel said.

Another photograph showed a detainee with a hood over his head standing on a box while attached to electrical wires. He was told if he stepped down he would be electrocuted. He had to stay there until he talked.

Even though the evidence implicated many individuals, only seven were charged. Specialist Charles Graner, who was dubbed as the most involved in prisoner abuse, his girlfriend Private Lynndie England, Staff Sergeant Ivan Frederick, who along with Graner was put in charge of running the day to day operations of one section of the prison, Sergeant Jamal Davis, Specialist Megan Ambuhl, Specialist Sabrina Harman and Private Jeremy Sivits were charged with conduct that amounted to torture as defined by Penal Code Section 206.

These soldiers were found to have the specific intention of inflicting cruel and extreme pain and in fact did commit Great Bodily Injury for the purpose of persuasion (getting a detainee to talk), revenge (getting revenge for their actions in the war), and sadistic purposes. This would fulfill the requirements of proving Penal Code Section 206, torture.

The result of the seven cases: Charles Graner, who was allegedly the most involved individual, was sentenced to 10 years. His girlfriend Lynndie England was sentenced to three years. Graner's sentence was the most sever of the seven people charged.

Graner was identified by the Army as the "ringleader of the rogue guards at Abu Ghraib". Besides the torturous conduct already described, he was found to have knocked a blindfolded prisoner unconscious with a punch to the head, smashed an inmate's leg with a steel rod and forced seven naked inmates to form a human pyramid. (See Exhibit 23, from a Washington Post article on Graner.)

Additionally, in the photographic exhibits Graner can be seen punching inmates who are bound and lying on the floor. Graner can also be seen smiling behind a pyramid of naked Iraqi inmates.

Lynndie England was found guilty of inflicting sexual, physical and psychological abuse on Iraq's prisoners of war. She was most known for her being in the shocking photographs

which showed sexual dehumanization of the inmates. In one photo, England is seen holding a leash attached to a naked Iraqi prisoner who was collapsed on the floor. In another photo, she stands with a cigarette dangling from her mouth giving a thumbs-up sign and is seen pointing at the genitals of a young naked Iraqi who has a bag over his head and is being forced to masturbate. In another photo England and Graner stand arm in arm grinning and giving a thumbs-up sign behind a cluster of naked Iraqis forced to lay on top of each other in a pyramid.

She also aided in the abuse Graner perpetrated. Ms. England received a three-year sentence for her torture. The others received anywhere from no time to 8 1/2 years. Graner, as stated previously, was given the longest sentence with 10 years.

In an entirely separate event, torture was committed by soldiers of the soldiers of the United States Army's 82nd Airborne Division, 1st Battalion, 504th Parachute Infantry Regiment, stationed at Forward Operating Base Mercury (FOB Mercury) in Iraq. These soldiers were referred to as "the Murderous Maniacs".

"Human Rights Watch" (HRW), a recognized human rights organization, released a report concerning the Army's investigation of torture at FOB Mercury. Their report includes first-hand accounts from soldiers who participated. (See Exhibit 30, Human Rights Watch report.)

HRW spoke to one officer and two non-commissioned officers of the 82nd Airborne who witnessed the torture being inflicted. They describe how their battalion in 2003-2004 "routinely used physical torture and mental torture as a means of intelligence gathering and for stress relief".

HRW reports that the officer and non-commissioned officer stated "that torture of detainees took place almost daily at FOB Mercury." Specifically, they reported "severe beatings (in one incident, a soldier broke a detainee's leg with a baseball bat); blows and kicks to the face, chest, abdomen, and extremities and reported kicks to various parts of a detainee's body; the application of chemical substances to exposed skin and eyes; forced stress positions sometimes to the point of unconsciousness; sleep deprivation; and subjecting detainees to extreme hot or cold and withholding of food and water".

HRW reported that "the torture of detainees was so widespread and accepted that it became a means of stress relief for soldiers". Soldiers reported that detainees suffered broken arms and legs from the beatings.

Once again, the conduct at FOB Mercury, like the conduct at Abu Ghraib, constitutes torture even as defined by Penal Code Section 206.

Due to this torture at FOB Mercury, HRW reports that the military launched investigations and prosecutions of lower-ranking personnel. In most cases "the military has used closed

administrative hearing to hand down light administrative punishments like pay reductions and reprimands".

As at Abu Ghraib, no life terms were given as punishment for the soldiers' torture.

Lastly, in yet another separate event, the Army began investigations and prosecutions of 15 soldiers for torturous abuse which led to the deaths of two detainees held in a military detention center in Afghanistan in December, 2002. (See Exhibit 31.)

In this case the two Afghans were found dead within days of each other, hanging by their shackled wrists in isolation cells at the prison in Bagram, Afghanistan. The Army investigation revealed that they were treated "harshly by interrogators, deprived of sleep for days and struck so often in the legs by guards that a coroner compared the injuries to being run over by a bus".

Of the 15 defendants, five have pleaded guilty to the assaults and other crimes. The harshest punishment any of them have received has been five months in a military prison.

One other defendant went to trial and was convicted of maiming, actually striking the detainee (he admitted repeatedly striking one of the detainees), and other crimes. He received no time, was demoted a rank, and honorably discharged.

Once again, the conduct committed by these soldiers in Bagram, as in Abu Ghraib and FOB Mercury fulfills the definition of torture pursuant to Penal Code Section 206.

Clearly, the torturous conduct committed by soldiers at Abu Ghraib, FOB Mercury and Bagram was much more egregious and harmful than anything Mr. Hamlin has been convicted for. Yet Mr. Hamlin in facing life in prison while the most severe punishment for any of the soldiers was 10 years in prison. The average punishment was significantly less than that. Many of the cases received no time in prison.

Justice dictates that someone like Mr. Hamlin, who has done less, should not receive more punishment. The prohibition against cruel and unusual punishment in excessive sentences is premised on a sentencing system that has order and proportionality. The system fails if it allows two individuals that have been accused of generally the same conduct to be treated differently at the sentencing and allows punishment for one to be far more excessive than for the other. The system fails if one defendant's conduct is less egregious than another and yet he is punished more excessively.

Disproportionality is determined by the objective comparison of what other defendant's are receiving as punishment for their respective crimes.

Is Mr. Hamlin's punishment so disproportionate for what he was convicted of, that it is prohibited by the cruel and unusual

punishment clause? The answer lies in comparison; how do other cases define torture; what do those cases receive as punishment; what do defendants that commit more egregious crimes receive as punishment; what punishment does less egregious conduct receive?

In answering these questions, it is clear that Mr. Hamlin's proposed punishment is so disproportionate that it is constitutionally prohibited.

In federal courts, conduct which much worse than Mr. Hamlin's conviction is punished much less severely.

In other states, conduct which is much worse or similar is punished much less severely.

In the state of California much more egregious criminal conduct is committed in comparison to what Mr. Hamlin did and it is punished much less severely.

In El Dorado County conduct committed by other defendants which is similar to what Mr. Hamlin was accused of is not even charged in the same way. Quite frankly, attempting to find another case with comparable conduct committed by a defendant where in he has been charged with torture has been virtually impossible.

Simply put, cases like Mr. Hamlin's are not "torture" cases and they certainly are not cases for which life in prison should be imposed.

The proposed sentence for Mr. Hamlin is so disproportionate that it violates the United States and California Constitutional prohibition against cruel and unusual punishment.

E

THE PROPOSED SENTENCE OF LIFE IN PRISON IS DISPROPORTIONATE WITH MR. HAMLIN AS THE DEFENDANT

The Court in Lynch, supra, looked at the accused in that case to determine if the punishment fit a person with his background. This analysis was done as a part of the Court's disproportionality analysis.

The Court concluded that the defendant was not "the prototype of a hardened criminal who posed a grave threat to society". The Court in Dillon, supra, completed the same analysis and also concluded that its defendant was no "the prototype of a hardened criminal who posed a grave threat to society". In both cases, the Court's finding that the defendant was not a hardened criminal and not a threat to society was a factor in concluding the proposed sentences were cruel and unusual.

Therefore, the defense would submit Mr. Hamlin's background to this Court as evidence that he, too, is not "the prototype of a hardened criminal" and that he does not present a threat to society.

Mr. Hamlin's personal background is as follows:

He was born on April 15, 1960, and is now 45 years old. He graduated from McGeorge School of Law in 1985 and was admitted to the California State Bar in June, 1986. He was employed by the Sacramento County District Attorney's Office as a Deputy District Attorney from 1985 through December 31, 1989. He established a criminal defense practice in 1990 and continued in that practice until 2004.

Mr. Hamlin had no criminal record before his arrest in this case and, in fact, had never been arrested prior to his arrest in this case. There had been no sustained complaints against him with the State Bar before his arrest and no formal or informal actions had ever been taken against him as a lawyer.

Mr. Hamlin grew up primarily in the East Los Angeles community of Highland Park. His family was very poor. He began working in the 6th grade with a paper route. He then began working in the 11th grade at Lucky's Supermarket.

High school found Mr. Hamlin to be an average student. Due to his family's economic status he did not believe college was an option. However, a counselor at his high school took an interest in Mr. Hamlin. The counselor's name was Jack Wright. One day, Mr. Wright asked Mr. Hamlin a very simple question: if he could do anything in the world, what would he want to be? Mr. Hamlin thought the question was stupid because of his economic and social status. But Mr. Wright kept pushing Mr. Hamlin for an answer, so Mr. Hamlin told him---if he could be

anything in the world it would be an Attorney. Mr. Wright told young Mr. Hamlin to mark that day. Mr. Wright took Mr. Hamlin to different college campuses and showed him how to apply for financial aid and scholarships.

Thanks to Jack Wright, Richard Hamlin actually believed he could do it.

Mr. Hamlin was accepted to California Lutheran College in Thousand Oaks, California, and experienced four of the best years of his life there. He was a C+ student in high school, but graduated from CLC with honors. He received only two C grades during his entire four years of school. At CLC he was involved in student government and campus ministries, and was captain of the school's debate team.

He put himself through his entire four years of college by working, receiving aid, receiving scholarships, and student awards. He received no financial help from his family.

His family life was not good as a child and young adult. His mother was an extreme alcoholic. She often would start drinking early in the morning and not stop until she passed out. Drinking really affected her moods. When sober she was a very caring mother figure, but when drunk she would be very rejecting and angry.

Mr. Hamlin's mom died when he was 18 years old, during his first year of college. Her death was due to kidney and liver

failure because of her extreme alcoholism. She was 38 when she died.

His dad was not around much in his childhood. As a result, as the oldest child he was left to deal with many of the family's problems, his mom's alcoholism, and their poor financial status. His dad was very inconsistent and not a real presence in Mr. Hamlin's life. During the 9th grade Mr. Hamlin's dad was sentenced to eight months in a work furlough program for a fraud case. During that time Mr. Hamlin had to be the sole head of the house.

After his mom died when he was 18, his dad moved to England a couple of years later, where he lives to this day. That move happened when Mr. Hamlin was 21 years old. He has seen his dad just a handful of times in the approximately 25 years that have passed since he moved.

After graduating from Cal Lutheran in 1982, Mr. Hamlin immediately began at McGeorge School of Law. He was involved in student government, the Jessup and Mock Trial teams, and was president of the Christian Legal Society. He also put himself through law school with financial assistance from his aunt.

During his time at the Sacramento County District Attorney's Office, he received two written commendations from John Dougherty, the elected District Attorney. When Mr. Hamlin left the District Attorney's Office he was part of the Career Criminal Special Prosecution Unit.

During the time in his own law practice, he grew financially every year until 2001. He represented three members associated with Governor Pete Wilson's administration. He was invited to and attended Governor Wilson's second inaugural.

Mr. Hamlin has a brother, Brad, who is married to Nicky. They have five children. Richard Hamlin and his brother are now very close and Brad has been a constant presence in Richard's life throughout this entire 2 year ordeal. Brad served as a legal runner for Mr. Hamlin during the court process.

Mr. Hamlin is most proud of raising four beautiful children. Some of Mr. Hamlin's fondest memories resulted from when they traveled on vacations throughout the United States. Mr. Hamlin has coached his son's Little League baseball team, encouraged his children's participation in sports, and loved to play games and watch movies with all his children. They had wonderful Christmas times together.

In addition to background presented of Mr. Hamlin before his arrest, the defense would ask this Court to examine his conduct since his arrest.

Mr. Hamlin has for the first time in his life spent time in jail. As of the time of this motion he has spent more than two years and two months in custody. During that time he has complied with all rules and regulations of the jail and has not received any write-ups or discipline during his time in custody.

Mr. Hamlin has, in fact, used the time in custody in a way to better and improve himself.

According to jail records (see attached exhibit 2), Mr. Hamlin has attended:

Church services	76 times
Free On The Inside	36 times
(a church-related program)	
A.A./N.A. meetings	23 times
Celebrate Recovery	39 times

Mr. Hamlin has utilized his time to strengthen and deepen his faith so that he may be a better and more consistent person upon his release. Mr. Hamlin has acknowledged that he has made mistakes and it is his desire to correct them and change the way he lives. Mr. Hamlin readily acknowledges that he was much too inconsistent in his Christian beliefs and is working hard to live his beliefs consistently every day. Celebrate Recovery has worked extremely well for him. This is a Christian-based recovery group that applies the 12-step program to everyday living. Mr. Hamlin has really connected with their philosophy and has been able to apply it to his daily walk.

As a part of his growth, he and other inmates have begun a daily Bible study in his pod. It meets twice a day and has grown from 2 of them to 12-14 people.

It is hoped that this Court will also take notice of Mr. Hamlin's conduct throughout his trial. Consistent with his behavior in the jail despite the enormous amount of stress that he has been under, Mr. Hamlin conducted himself in trial respectfully without any outbursts. Despite the stress of trial and in the presence of his accuser, Mr. Hamlin maintained a professional demeanor and was in control of his emotions.

The significance is that Mr. Hamlin has been in situations that would clearly test anger management or impulse control problems and he has not stumbled.

In addition to the classes that Mr. Hamlin has attended, he has done a significant amount of self-help through reading and workbooks. During and after Mr. Hamlin's family court proceedings, he has gone above and beyond what was required in an effort to improve as a parent.

Mr. Hamlin has completed the following:

1. Father, Son, 3 Mile 128 pages

   Completed a 1 page book report

2. Between Parent & Teenager 255 pages

   Completed a 4 page book report

1. Learning to Live Without Violence 128 pages

   Completed the workbook and wrote a 22 page book report

4. Came To Believe AA book 120 pages

5. Living Sober 88 pages

6. 12 Steps & 12 Traditions 192 pages

7. Alcoholics/Anonymous 575 pages

8. Pathway To Sobriety 244 pages

Completed a very lengthy workbook

9. It Will Never Happen To Me 183 pages

Completed a 2 page report

10. The Adult Children of Alcoholics Syndrome 159 pages

Completed a 2 ½ page book report

11. A.A. in Prison/Inmate to Inmate 127 pages

Completed a 1 page book report

12. Parents Handbook 133 pages

Completed the workbook

13. Completed "Overcoming Anger" pamphlet

14. Read "Making Quality Time With Kids" article

15. Read "Parent Talk" pamphlet

16. Wrote report on Health Child TV segment "Child And Sleep"

Additionally, the defense has included characters letters for Mr. Hamlin.

In looking at Mr. Hamlin's background and his conduct after his arrest, this Court should see a consistency of good behavior that is not a risk to society or others.

Before Mr. Hamlin was arrested on February 28, 2004, he had lived nearly 44 years without an arrest as a juvenile or as an

adult. Mr. Hamlin had practiced law with distinction and without a sustained complaint or any reprimand for nearly 18 years.

After Mr. Hamlin's arrest, he has obeyed all jail rules and regulations, been in control during court and trial appearances and has utilized his time in custody to better himself, correct mistakes, and attempt to help other inmates.

This Court should look to the exceptionally unusual circumstances that surrounded Mr. Hamlin's conduct that led to his convictions. Mr. Hamlin was told by his wife of horrific child rape and molestation of her by her father. Mr. Hamlin was then told of the molestation of his children by Ms. Hamlin and her father. Mr. Hamlin was told of a plan to hurt him and to take his children. Mr. Hamlin believed these things.

It is hard to imagine the pressure and pain that anyone would feel upon hearing these things. Mr. Hamlin admitted to making mistakes while under that pressure, pressure that was absolutely extraordinary.

What this information and the personal letters submitted to this Court on Mr. Hamlin's behalf (See Exhibits 34-46) clearly display is that he is not a hardened criminal and definitely not a threat to society. Quite the contrary, Mr. Hamlin has used his time in custody as an opportunity to improve himself and assure that he will continue to be a positive influence.

III.

PEOPLE V. BARRERA DOES NOT PROHIBIT A COURT FROM DETERMINING THAT A SENTENCE PURSUANT TO PENAL CODE SECTION 206 IS CRUEL AND UNUSUAL PUNISHMENT

This Court had directed counsel to read People v. Barrera (1993) 4 Cal.App.4th 1555, as it related to the issue of whether Mr. Hamlin's sentence was cruel and unusual punishment. The defense had already read Barrera and was surprised that this Court seemed to imply that Barrera was an end-all and final say on this issue. Reliance on Barrera is of very limited value.

First of all, Barrera does not stand for the proposition that every conviction for Penal Code Section, torture, is not cruel and unusual punishment. Quite simply it couldn't stand for that in light of California and United States Supreme Court cases that specifically direct the court to examine each case separately and look to the particular facts of the case in coming to a decision of whether a sentence is unconstitutionally disproportionate with the defendant's conduct.

In Barrera, the Court found that in that particular case and with those particular facts, the sentence of life in prison for a violation of Penal Code Section 206 was not cruel and unusual punishment. The defense has readily acknowledged that Penal Code Section 206, torture, is not unconstitutional on its face. The application of its life term can be, in certain cases, cruel and unusual punishment. As the defense has cited,

the majority of cases where the court finds that the punishment is cruel and unusual punishment is due to the application. The Penal Code Section is on its face constitutional but its application is unconstitutional as to a particular set of facts.

Barrera can be distinguished from Mr. Hamlin's case by comparing the facts from each case. In Barrera, the defendant broke into the victim's home along with three co-defendants. The victim was grabbed by the hair and forced to sit in a chair. At the defendant's direction, one co-defendant held a sawed-off shotgun against the victim's head while another co-defendant held a knife to his throat. This was done in front of the victim's 8-year-old son. The defendant robbed the victim of money that was on his person and demanded to know where other money might be. The victim claimed that he had no other money.

The defendant then shot the victim in the leg in front of the victim's son. The gunshot caused the victim to bleed profusely and the bullet broke the victim's leg. The victim still did not tell the defendant where further money was, so the defendant threatened to shoot the victim's son and held a gun to his son's head. The victim then told the defendant that he did have more money.

The victim was then forced to walk to an outside shed to get the money. The victim experienced severe pain having to walk on a broken leg that was bleeding profusely from the

gunshot. Once the defendant went to the shed he found the additional money and stole that, too.

One of the co-defendants then jabbed the victim with a knife. On the last attempt to jab him, the victim blocked the knife blow and collapsed. The defendants left him outside bleeding, arguably to die. The victim was also struck with the butt of a gun.

The victim suffered an open fracture of his right tibia. He was hospitalized for three days. When released his leg was in a cast and he had to walk with the aid of crutches.

The conduct in Barrera is extreme. The defendant broke into the victim's home bringing three others with him to terrorize and torture the victim until he revealed where his money was. The defendant shot the victim at close range causing severe injury. He was then forced to walk on a broken and shot leg while bleeding profusely. This was all done while his son had a gun to his head and the defendant threatened to kill him. The victim was then jabbed with a knife and hit in the head with the butt of a gun.

The victim in Barrera, like the victim in Singleton, was left to die; collapsed, bleeding outside and unable to walk or call for help.

Now compare that to Mr. Hamlin's case. Even before the jury returned its verdicts clearing him of many specific claims, there were no claims that rose to this level of violence and

harm to Ms. Hamlin. Ms. Hamlin was not shot. She was not hospitalized. She did not require a cast of stitches.

Barrera's victim was shot, had his leg broken, was bleeding profusely and then was forced to walk to an outside building. Barrera did not stop with the initial shot, he immediately used that severe injury to hurt the victim further.

Barrera's conduct is similar to Singleton, Hale, and Baker but not Mr. Hamlin's.

Another significant difference is that the court's analysis of the "nature of the offender". In Barrera, the Court properly followed the requirement to examine whether the punishment is disproportionate to the individual. In making such a determination the Court looks to the "age, prior criminality, personal characteristics and state of mind". (People v. Dillon, supra, 34 C3d at page 479.)

Barrera was 31 years old and had a significant criminal history. As the Court noted at page 1567, "He was hardly new to the criminal justice system". He had numerous juvenile criminal convictions including commitments to CYA for battery upon another ward and auto theft. As an adult he was convicted of armed robbery and burglary which caused him to be sent to state prison. After his release, Barrera subsequently violated parole 6 times resulting in additional prison time. Due to his criminal activity and convictions he was not steadily employed.

Mr. Hamlin, 46, comes before this Court with no prior convictions as an adult or juvenile. He has been employed steadily since 6th grade. As a lawyer he had never been disciplined and in act served with distinction as a Deputy District Attorney and as a defense attorney.

In Barrera, the Court further noted that the defendant did not commit his actions because he was "confronted with danger and acting under the type of fear and duress that the defendant in Dillon experienced.

Mr. Hamlin, on the other hand, was under extreme stress. He was told by his wife that she had been molested and raped by her father as an infant and continuously thereafter including after Mr. and Mrs. Hamlin were married. He was told that Ms. Hamlin's father, who had raped her, had molested the Hamlin children. Mr. Hamlin was told that Ms. Hamlin participated with her father in the molest of the Hamlin children. Mr. Hamlin was told of a plan to take his children by Ms. Hamlin and her father, Sidney Siemer. Lastly, Mr. Hamlin was told by Ms. Hamlin that there was a plan to have Mr. Hamlin murdered.

Mr. Hamlin's conduct before and after his arrest has been exemplary. There has been a consistence of Mr. Hamlin being a productive and contributing member of society. The time period covered by the convictions is the extreme exception and not the rule; it was a time period of severe stress and duress.

Another important distinction between Barrera and Mr. Hamlin's case is in the "comparison with punishments for more serious crimes with the same jurisdiction". In Barrera, the Court found there were no more serious crimes that were punished less severely.

This cannot be read and followed as a general rule that all torture cases have no other more serious crimes in California that are punished less severely. The California and United States Supreme Courts' guidelines for cruel and unusual punishment review dictate that courts examine whether the defendant's conduct is punished disproportionately. Simply put, the Court must determine if the punishment is appropriate for what the defendant did.

This analysis is especially important in torture cases. "Torture", unlike other crimes, does not specify what it is that constitutes the crime. Herein lies the weakness of this stature; what constitutes "torture" for one defendant could vary significantly from another defendant.

The Court in Barrera did not have to articulate this point because the conduct by the defendant was egregious. In Barrera's particular case there were no more serious crimes (conduct) that were punished less severely; Berrera's conduct was that extreme.

The constitutional analysis of whether a punishment is cruel and unusual is not determined by mere labels. It is

determined by what the defendant did; what the defendant's conduct was. That is precisely why the Court must answer the question of what did the defendant do that constituted the violation of Penal Code Section, torture.

In Mr. Hamlin's case, as already argued, comparing his conduct with other case does reveal more serious crimes and conduct (such as manslaughter; see previous arguments) being punished less severely.

Along the same lines comes another distinction with Barrera, in its "Comparison With Punishment For The Same Crime Outside This Jurisdiction".

The Court noted that the defense did not put forth a comparison because no other state had the crime of "torture". The defense in Barrera failed to properly present evidence to the court.

"Torture" is a label. "Torture" is conduct that is defined by a statute in the Penal Code. In determining whether the conduct which constitutes a violation of Penal Code Section 206 is cruel and unusual punishment, it must be determined whether the defendant's punishment is disproportionate to what he did.

One way to make that determination is to compare what the same conduct receives as a punishment in another jurisdiction. Thus, the defense in Barrera should have compared comparable conduct.

As previously argued, Mr. Hamlin was able to make such a comparison with the state of New York and a series of federal cases. That comparison revealed that conduct which would have satisfied Penal Code Section 206 was punished much less severely than the proposed sentence for Mr. Hamlin.

In conclusion, Barrera is clearly distinguishable and not on point. In fact, Barrera does serve one important defense purpose; to serve as an example of a case that is factually in keeping with the original intent of the Legislature in creating Penal Code Section 206. Barrera's conduct and his background justified a life term. Mr. Hamlin's conduct and background do not.

Dated: April 28, 2006.

ROBERT BANNING
Attorney for Defendant

(9)

EL DORADO CO. SUPERIOR CT.

FILED _____

BY _____ Deputy

People of the State of California,

Plaintiff(s),

Case No. P04CRF0132

vs.

Richard William Hamlin,

Defendant(s).

/

QUESTIONS BY THE JURY

QUESTION:

There is an overlap in dates for some charges. If we find the defendant guilty on a charge that covers a small time frame, like a few days, would that automatically render a guilty verdict on a charge with a larger time frame, say 2 months, when that smaller time falls within the larger time frame?

Dated: 12/29/05 1315 HRS

Foreperson

ANSWER (IF ANY) BY COURT

See attached answer

Dated: 12/29/05

Eddie Keller

Judge of the Superior Court

EXHIBIT 1

Each count charges a distinct crime. You must decide each count separately. The Defendant may be found guilty or not guilty of any or of all of the crimes charged. Except for Counts I-IV, which are alleged to be a continuous course of conduct by Mr. Hamlin over the time period alleged, the District Attorney has selected specific incidents to allegedly support the chrages in Counts V through XVIII.

Count V (Penal Code Section 245(a)(1)): The alleged assault in the office at the Hamlin house on September 17, 2003.

Count VI (Penal Code Section 422): The alleged threat to kill Ms. Hamlin on the tape recording made on February 2, 2004.

Count VII (Penal Code Section 273.5): The alleged spousal abuse and false
Count VIII (Penal Code Section 236): imprisonment of Susan in the Hamlin bedroom the weekend Mark Steinberg was a visitor (February 7, 2004 to February 9, 2004).

Count IX (Penal Code Section 273.5): The rib breaking incident occurring on Super Bowl Sunday February 1, 2004.

Count X (Penal Code Section 245(a)(1)): The alleged assault by sword occurring on February 10, 2004 – February 11, 2004.

Count XI (Penal Code Section 422): The alleged holding of a gun on Ms. Hamlin
Count XII (Penal Code Section 236): and threats to kill her in bed on February 10, 2004 to February 11, 2004.

Count XIII (Penal Code Section 273.5) : The alleged spousal abuse, assaults
Count XIV (Penal Code Section 245(a)(1): and threats to kill Ms. Hamlin during
Count XV (Penal Code Section 422) : the Granite Bay van trip.

Count XVI (Penal Code Section 246.3): The alleged discharge of a gun by Mr. Hamlin during the family's ride in the van around the neighborhood between February 21, 2004 and February 22, 2004.

Count XVII (Penal Code Section 273.5(a): The alleged breaking of Ms. Hamlin's nose during the laundry room incident on February 22, 2004.

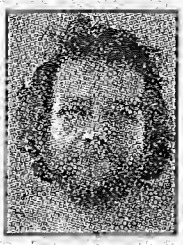
Count XVIII (Penal Code Section 245(a)(1): The alleged assault on Ms. Hamlin with a stick and pipe in the garage prior to going into the laundry room on February 22, 2004.

You must unanimously agree that Counts V through XVIII are supported by the specific incidents argued to you by the prosecutor. Mere overlap in time between the Counts would not necessarily require guilty verdicts. You must consider and find whether each of the elements of each of the crimes have been proven beyond a reasonable doubt during the time period alleged.

Eddie Keller
Judge

Woman brutalized; man jailed

By JESSI MARTIN
Staff writer


STEPHEN BENNETT

After allegedly slamming his girlfriend's head into the ground multiple times, slapping her in the face, attempting to bind her hands and mouth with duct tape, dousing her with water, ripping off clothes and threatening to kill her, 46-year-old Stephen Bennett was arrested Sunday at 8 p.m. by El Dorado County sheriff's deputies, according to sheriff's reports.

The couple had reportedly been together off and on for roughly 20 years, have an 18-year-old daughter. They had been separated for the last three weeks, according to the girlfriend's statements to deputies.

The 42-year-old woman said that Bennett had started questioning her after dinner that night about who she had been staying with during their time apart, and though she said she denied being with any other man, Bennett reportedly attacked her, allegedly throwing her on the floor, putting his knees on her chest, slamming her head on the floor about eight

see BENNETT, page A-11

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BENNETT

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times, and slapping her face up to 20 times, according to the woman's statements to deputies.

The woman reportedly told deputies that Bennett had attempted to duct tape her hands and mouth, but that she had managed to remove the tape and hit him several times in self-defense.

When she reportedly tried to leave the residence, he allegedly ripped off her clothes to prevent her from going out, and when she put them back on he reportedly doused her with water to force her to take them off again, the woman told deputies.

Bennett reportedly started talking about killing her, her boyfriend, and himself, and had a .12-gauge shotgun on the couch that was apparently loaded at the time, according to deputies' reports.

He reportedly covered her mouth and nose with duct tape again, making it difficult for her to breathe, and tried to duct tape her hands when she reportedly broke free and ran up the driveway where she was allegedly tackled by Bennett who began slamming her head into the pavement, the woman told deputies.

Neighbors reportedly saw Bennett drag the woman back into the house by her hair while ripping off her clothes. The witnesses called 911, and deputies arrived to find a trail of clothes leading up to the house with angry yelling, hoarse screaming and thumping noises coming from the inside, according to reports.

Deputies said they broke down the front door and took Bennett into custody.

They said the woman was crying hysterically, gasping for breath, and had swollen lips and scrapes and scratches on her knees and back. She was transported to Marshall Hospital for treatment of her injuries.

A search of the residence later revealed two shotguns, three rifles, an assault pistol, a Ruger handgun, a homemade silencer, ammunition, a homemade ball-and-chain-style mace with a three-inch ball and seven spikes, and a Smith and Wesson handgun on the coffee table, according to deputies' reports.

Bennett was booked at the El Dorado County Jail on suspicion of spousal abuse, kidnapping, and being a convicted felon in possession of firearms. As of press time Tuesday he was in custody in lieu o $65,000 bail.

Send comments t jmartin@mtdemocrat.net call 344-5064.

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Judge orders psychiatrist in slashing case

By William Ferchland

Tahoe Daily Tribune

A psychiatrist will be appointed by El Dorado County Superior Court to mentally evaluate Steve Wasserman, who is charged with attempted murder in allegedly slashing his ex-girlfriend with a sword.

The evaluation was ordered Monday by El Dorado County Superior Court Presiding Judge Suzanne Kingsbury. Two psychologists, one for the prosecution and one for the defense, evaluated

STEVE WASSERMAN

Wasserman, who appeared in court with longer, curly black hair and a patchy beard. Kingsbury seemed unsurprised the two analysts had differing opinions on Wasserman's mental state.

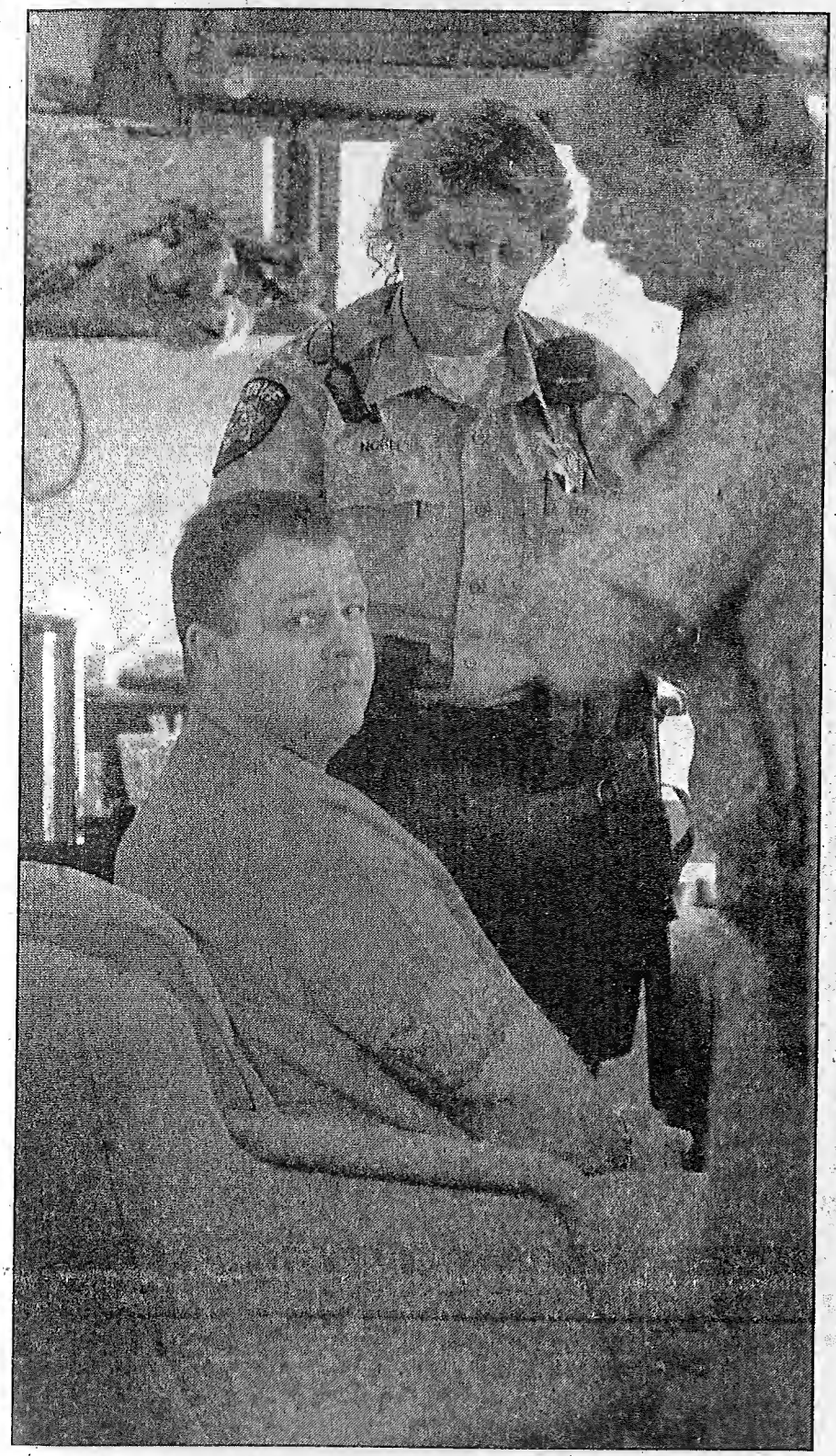
Defense attorney Lori London "strongly" opposed the appointment of a third mental evaluator and stressed the person should be without bias. Prosecutor Tony Sears agreed.

Wasserman has pleaded not guilty and not guilty by reason of insanity to three special allegation felonies - attempted murder, aggravated mayhem and residential burglary - and two misdemeanors of endangering a child and violating a restraining order. He is being held at El Dorado County Jail at $10 million bail.

His former girlfriend, Susan Rizk, was hospitalized for two months and required five surgeries during her healing process. The pair's 4-year-old daughter allegedly witnessed the attack.

A March 7 trial date was ruled void. Instead, an April 10 trial-setting date was scheduled. Kingsbury guessed the trial might start sometime in June.

She also stated questionnaires for possible jury members is one of the next business matters and will determine whether the trial will take place in South Lake Tahoe.



16 to life for Davis

Davis removed from courtroom before sentence handed down

By RYAN McCARTHY
Staff writer

Convicted murderer Ricky Leo Davis, sentenced Monday to 16 years to life in prison, was led out of a Placerville courtroom and held in an adjoining area after complaining Monday about comments by a daughter of the woman he killed.

Sue-Ann Schroder, one of murder victim Jane Anker Hylton's six children, was speaking about how for the first year after her mother's 1985 murder in El Dorado Hills she lived in fear that someone also wanted to kill her family. Schroder said she never wanted her own children out of her sight.

Family members of a crime victim can address

see **SENTENCE**, page A-9

Democrat photos by Dan Burkhart

RICKY DAVIS, 40, right, sits in court next to his attorney Jim Clark before sentencing Monday in Placerville. Davis, who was later led out of the courtroom, left photo, for his outbursts, was sentenced to 16 years to life for the 1985 murder of Jane Anker Hylton at Davis' home in El Dorado Hills. Anker was staying there as a houseguest with her teenage daughter.

EXHIBIT 4

SENTENCE

continued from A-1

the court before a defendant's sentencing.

"This lady wants to judge me," Davis, 40, interjected. "I'm absolutely innocent."

El Dorado County Superior Court Judge Eddie T. Keller warned Davis that, "If you keep this up, I will have you excluded from the courtroom."

Davis continued to protest and officers took him to an adjoining room.

Judge Keller, who presided over the three-week-long trial that ended in August, referred to the knifing that left Hylton dead after being stabbed 29 times.

"This was a bloody horror story," Keller said. "This was almost beyond belief."

"Ricky Davis should never see the light of day," Keller said. "He cooked up an alibi and staged the scene."

"This poor woman was here on this weekend and it winds up ending her life," Keller said.

Hylton's daughter Schroder in her statement Monday said that, "It's almost impossible for me to describe to the court how my mother's death has impacted my life."

"What can I ever say to the court that would really make you understand the sadness in my soul — which will miss my mother for the rest of my life?" Schroder asked.

"Throughout this trial," she said, "Ricky Davis has proven to me that he feels his life of crime should be exempt from the laws this society makes. He has shown no remorse for murdering my mother, which only emphasizes to me that he believes he can get away with murder."

Schroder added of Davis that, "If he hasn't already done so, I think he is capable of killing again."

The 1985 murder was reopened as a "cold case" investigation in 1999 by El Dorado County Sheriff's Detectives Rick Fitzgerald and Rich prosecuted the second-degree murder case.

Schroder said of her mother Hylton that, "She just needed someone else to take a better look at what happened to her on the night of July 6, 1985."

"I will be forever indebted to the people who pieced together what happened and pursued justice for my mother and my family," Schroder said.

Prosecutor Anderson said after the sentencing that "I'm just glad Jane has justice. I'm glad for Jane's family."

Noting the work of the detectives in the cold case investigation, Anderson said that "without detectives Fitzgerald and Strasser we wouldn't be here."

Davis will have to complete a separate stay in federal prison for bank robbery before beginning his time for the second degree murder conviction. Davis, 40, had been scheduled for release in 2008 on the bank robbery charge.

He murdered Hylton, 54, a houseguest in the Davis home, after she told him he couldn't give her 13-year-old daughter a ride. Davis and his girlfriend Connie Dahl told officers in 1985 that they returned from a party and found Hylton's dead body in the upstairs master bedroom. Dahl, 39, confessed after interviews with detectives during the cold case investigation and later pleaded guilty to voluntary manslaughter. She was released from custody last month following her testimony in the Placerville murder trial of Davis.

Autumn Solbrack, who was 13 and a houseguest along with her mother in 1985 at the Davis home, spoke Monday in court and called the night of the murder "a dreadful nightmare."

"For two decades I have carried the burden of these people's actions," Autumn said in reference to Davis and Dahl.

Autumn has said that in July 1985 she went out to see friends and then waited outside the El Dorado Hills home for Davis and Dahl to return. Autumn said she was concerned her mother would be angry with her for staying out so late. Walking inside the home with Davis and Dahl at about 3:30 a.m. on Sunday, July 7, Autumn said she heard screaming and then ran to the master bedroom where she saw her mother's body.

"The police were constantly interrogating me," Autumn recounted. "Although I only wanted to help, I was not being heard. Being accused and held responsible for mother's death forced me to be defensive to both the police and my family. No one believed in me. No one wanted to hear me."

Autumn said that her entire family was victimized that July night in 1985.

"After my mother's death all happiness was lost," she said. "We were ripped from our nurturer, confidant and friend. The glue that held our family together was suddenly gone."

She thanked the jury, Judge Keller, prosecutor Anderson and her attorney David Eyster, "for bringing justice to my mother's death and finally giving her soul a chance for peace."

efendant in murder trial is free woman

By PAT LAKEY
Managing editor

After knowing for the past three years she could face up to 11 years in prison for her role in the slaying of an El Dorado Hills woman two decades ago, Connie Dahl is free.

Superior Court Judge Eddie T. Keller on Thursday told the 39-year-old mother that "because you did the right thing" in testifying against the man who stabbed Jane Anker Hylton 29 times, the community "owes you a debt of gratitude."

Dahl was sentenced to a year in jail, but with time served credits, her sentence has been completed. She also was placed on three years formal probation. That probation will not be served in California, however, as the judge said Dahl would be in danger if she remained in this state. Instead, an arrangement will be worked out with another jurisdiction so that probationary supervision can be carried out in another state.

"Don't go back to that poison and let it ruin your life and your children's lives."

— Superior Court Judge Eddie T. Keller, telling Connie Dahl she had better stay off illegal drugs

The judge said he had considered a state prison term for Dahl, who earlier pleaded guilty to voluntary manslaughter, but that once she was released and on parole, she would have to remain in California under that scenario.

"This is a very unusual way of handling this case," Judge Keller said. "I have serious concerns for your safety if you were on parole. I want you out of this state so you can be safe. You and your children."

During the trial of Ricky Leo Davis, found guilty Wednesday of the July 6, 1985, murder, it became known that Davis, 40, has a "list" of people whom he apparently considers his enemy.

Dahl was Davis' girlfriend at the time of the brutal slaying, and she testified in his trial that she saw Ricky punch Hylton in the face, then was told to be a lookout at the home on Stanford Lane. She said she heard "gurgling," and that Davis later made her and Hylton's then 14-year-old daughter, Autumn, place the body on a bed. Autumn Anker testified that she had n

see DAHL, page A-7

Kidnapper Pitts gets 11 years in prison

By RYAN McCARTHY
Staff writer

A Superior Court judge sentenced Michael Conan Pitts to the maximum 11 years in state prison for kidnapping a 9-year-old girl as she waited for a school bus in Pollock Pines.

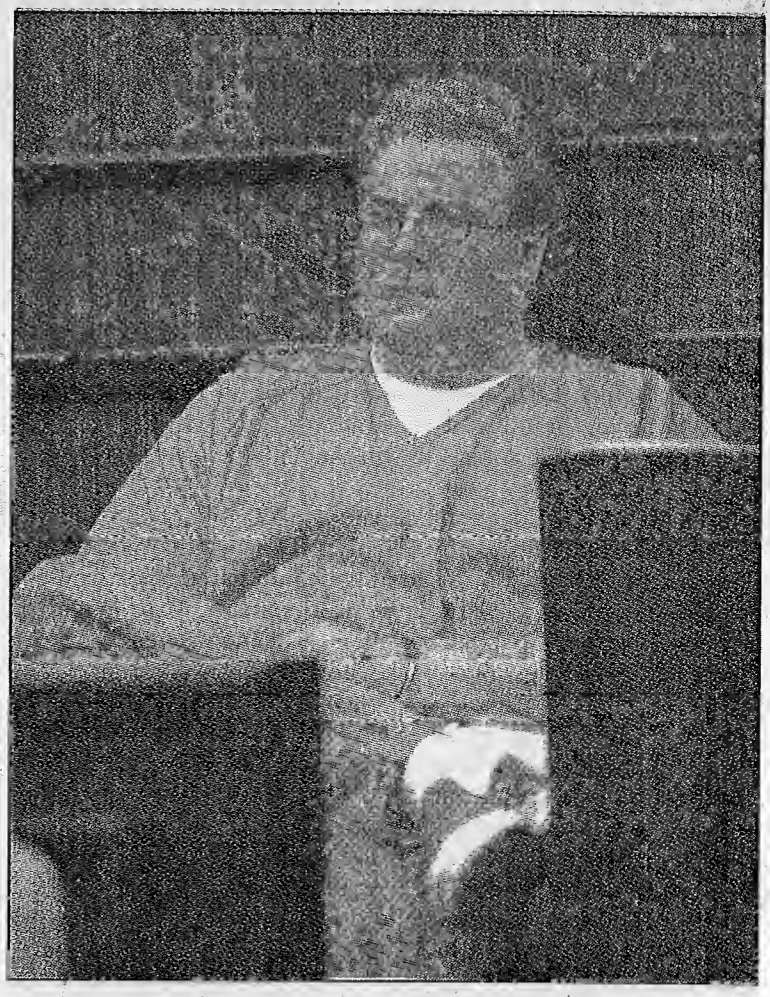
"(Michael) Pitts should be put away forever, and he won't be able to do it again."
— Girl who was 9 when she was grabbed by Pitts at a bus stop

"You deserve a much longer sentence," El Dorado County Superior Court Judge Eddie T. Keller told Pitts Friday. "You are a menace to our community.

"If you're not in prison for as long as we can put you in there," Judge Keller added, "you'll continue to be a danger to others."

Before beginning the state prison term, Pitts, 28, who showed no reaction to the sentencing, will finish a separate

see **PITTS**, page A-6



Democrat photo by Dan Burkhart
MICHAEL PITTS sits in the jury box in Superior Court in Placerville Friday, just moments before being sentenced to a maximum term in state prison.

8 years in prison for thief

PITTS

continued from A-1

54-month term in federal prison for his conviction on possessing child pornography.

He was found guilty by a jury in February of the Sept. 30, 2003, kidnapping of the youth, who was able to break free and run to her grandmother's home.

The girl appeared in court Friday and said Pitts "tried to take my life away and not let me see my family again."

"So I think he should not be able to see his family again," she said.

"Pitts should be put away forever," the youth said, "and he won't be able to do it again."

The girl's mother said after the sentencing that she agreed with the judge in seeking a longer sentence. But she said after the sentencing that justice had been done.

"Had my daughter not fought for her life," her mother said in a statement read in court, "it would have ended that day.

"My daughter now knows what an ugly world we live in," her mother stated. "When will she feel — if ever — the same carefree spirit she once had? Has he killed that instead of her?"

Pitts "sat in court without remorse, void of emotion and even smug, with a smirk on his face," the mother said.

Chief Assistant District Attorney Sean O'Brien, who prosecuted the case, said in court before the sentencing that the girl faced a severe fate if she hadn't broken free of Pitts.

"Had she not fought her way out," O'Brien said, "she might have been seriously injured or killed."

Pitts denies kidnapping, admits to sexual interest in children

Convicted kidnapper Michael Pitts admits he is sexually attracted to children and said he looks forward to federal prison because it provides treatment for sex offenders — but continues to deny abducting a 9-year-old Pollock Pines girl.

"Bottom line, I didn't do it," Pitts said of kidnapping the youth Sept. 30, 2003. "I was with my parents at the time.

"I did the porn and admitted it," he added of his federal conviction for possessing child pornography.

Of the kidnapping, Pitts states, "If I was going to kidnap someone, why would I do it in the same community that I live (in)?

His statements are part of a probation report prepared for Pitts' sentencing Friday.

Asked if he is sexually attracted to youths, he answered, "I guess you could say that, obviously."

Pitts, 28, said he was about 23 years old when he realized he was attracted to young girls.

The former Pollock Pines resident was asked whether he ever felt it was wrong to look at such child pornography.

"Honestly, not until after I was arrested," Pitts answered. "I started to evaluate my life and what I'd done and thought, 'This is crazy.'"

Saying he wants to take advantage of treatment for sex offenders, Pitts states, "I don't want to get out and reoffend" by viewing child pornography again.

"I don't think I will," he added. "But if there's a way to get help that's good."

The 28-year-old, who listed three different school districts as former employers, also states, "How come I never had these thoughts with the children I worked with when I worked for the school system?"

In a March 1 "defendant's statement" included in the probation report, Pitts writes of the circumstances of his offense.

"A 9-year-old girl was kidnapped on Sept. 30, 2003, " he stated. "Fortunately the victim was able to get away."

Pitts said that, "I feel I was convicted by assassination of my character."

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Convicted rapist awaits program location

By NOEL STACK
Staff writer

Convicted rapist George Michael Clink will wait about two more weeks to find out where he will serve his sentence for raping a 14-year-old girl.

Clink, with attorney Erik Schleuter, has been trying to check into drug and alcohol rehabilitation programs since he was sentenced in March 2004. El Dorado County Superior Court Judge Eddie T. Keller originally sentenced Clink to nine-months with the California Rehabilitation Center but the sentence didn't work out.

"Because of budget cuts, the CRC decided it was going to solely focus on drug crimes," Schleuter said. "They sent him back."

Now in the El Dorado County Jail, Clink will wait until Nov. 19 to find out where he will participate in a rehabilitation program.

Keller warned Clink at Friday's hearing that he had better be serious about straightening out his life. None of the programs want someone who doesn't want to work through their addictions, Keller said.

"Unless you're willing to commit to that, it doesn't do you any good," he said.

If Clink does not go through a drug and alcohol rehabilitation program, he will serve a prison sentence of three years and four months.

Clink was convicted of raping the young girl at a party in July 2003. He also served time on charges that he had repeated sexual intercourse with a 13-year-old girl earlier that year.

Clink told officers he was "drunk and high on crank" when the latest sexual assault occurred. He also told psychologists that he drank and had used drugs, including methamphetamine, since he was 10 years old.

"George's whole problem is with drugs and alcohol," Schleuter said after the hearing. "If we get a handle on that, we're not going to have the problems he's had."

EXHIBIT 7

Jail time given to child molester

A Placerville man who pleaded no contest last month to committing a lewd act upon a child under the age of 14 was sentenced Friday to 270 days in county jail and put on three years probation.

Timothy John Stockdale, 44, was arrested in October 2005 for his actions that month with a 13-year-old girl.

Stockdale must also participate in sex offender treatment and have no contact with minors under the age of 18 unless accompanied by an adult over 21 who is approved by a probation officer.

EXHIBIT 8

Man gets three years for molesting

A man accused of molesting a girl in Placerville a decade ago was sentenced Tuesday to three years in state prison after his guilty plea.

Brian Edward Hazen, 31, of Sparks, Nev., entered the plea just before jury selection in the case was set to start.

"As potential jurors sat in the courtroom waiting to see if the case would go forward he pled," deputy district attorney Joe Alexander said.

The victim, who was prepared to testify in the case, told family members about the molestation last year.

EXHIBIT 9

Lewd acts nets man 9 years

By RYAN McCARTHY
Staff writer

A former Pollock Pines man was sentenced Wednesday to nine years in state prison for lewd acts upon children.

"I know I have done wrong," Alex Jose Nieto, 44, said before his sentencing. "It was hideous what I did."

Nieto had earlier pleaded no contest — the legal equivalent of guilty — to the charges.

Friends of a 14-year-old girl had brought her to the El Dorado County Sheriff's Department to report the molestations that occurred at Nieto's home, according to the probation report. A second victim disclosed that Nieto had first assaulted her when she was 11 or 12 years old, the probation report states.

Deputies also responded to the office of a Diamond Springs psychotherapist after he reported that Nieto admitted the activities. Nieto was taken into custody and booked Oct. 23, 2004.

The molestation victims appeared at Wednesday's court hearing before Judge Douglas Phimister urging that Nieto be sent to state prison.

"No young girl should experience this nightmare," said the 17-year-old who disclosed molestations that took place when she was younger. "I feel broken."

Nieto, a native of Miami, spent much of childhood in Costa Rica. He said that as a small child he had been molested by a nanny and has always been insecure as a result.

"I'm not a bad man," he said in a statement provided the court. "I just did something very bad."

Attorney Susan Gellman, who represented Nieto in the

"He knows he's going to prison," she said.

Judge Phimister before imposing the nine year sen-

see LEWD, page A-4

EXHIBIT 10

Parole convicted in assault, torture

By Ramon Coronado
BEE STAFF WRITER

Daniel James Harper was convicted Tuesday on 12 felony counts including attempted murder, carjacking, sexual assault and torture of a Carmichael hospital employee. Harper slit the woman's throat and set her on fire in the 2004 attack.

He also was convicted of selecting the 52-year-old victim solely because of her race. Trial evidence showed he hated Mexicans because, he said, they gave him seizures.

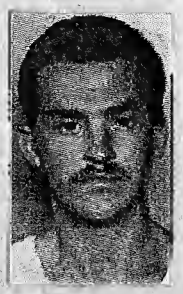
The 30-year-old parolee acted as his own lawyer. He faces life in prison at sentencing March 28 before Sacramento Superior Court Judge James L. Long.

As jurors left the courtroom, many of them shook hands with the victim's family. The woman has not been identified by The Bee, because she was a victim of sexual assault.

"She's just real happy this is finally over," said her 34-year-old daughter.

Harper, who has previous convictions of burglary and robbery, was convicted of using a knife to kidnap the woman about 6 a.m. Oct. 30, 2004, from the parking lot at the San Juan Medical Center,

▶ HARPER, Page B2



DANIEL HARPER

He was found guilty of abducting, assaulting, torturing and trying to kill a Mercy San Juan Medical Center employee. He acted as his own attorney.

WEDNESDAY
March 8, 2006

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Talking turkey: The exuberant flock of turkeys that had downtown office workers and Land Park residents giddy with delight a couple of weeks ago has resurfaced. This time, the birds seem to have made a home in the vicinity of Swanston Drive, between the Old City Cemetery and Interstate 5, reports **Marsha Devine**. "I don't know where they are roosting, but if I ever find out, I'm not telling," Marsha said. Don't even think about asking. ...

Stand up: **Linda Martin** said it best among a chorus of readers who cheered **Joyanne** and **Jim Sissom** for trying to catch a couple of purse snatchers near Country Club Plaza Mall. "Many people applaud their willingness to get in-

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T man's mother, Carol Mill.., 47, and Mark Witt, 34, were arrested on suspicion of child endangerment and dependent elder abuse. Miller's 14-year-old daughter was taken into custody that day by Child Protective Services.

Both Miller and Witt were tight-lipped when reached by phone Monday night, saying they needed to talk to a lawyer.

"It all has to come out because the way that everybody else depicted it. There was so much false information," Witt said.

Police initially showed up at

The lawmakers ultimately were able to $400,000 through a transpor. .on and treasury appropriation bill that passed in November.

"This settles the assistance in January another one of the food bank's distribution centers.

■ ■ ■

The Bee's Judy Lin can be reached at (916) 321-1115 or jlin@sacbee.com.

Harper: Testifying was ordeal for victim

▶ FROM PAGE B1

where she worked for 12 years.

The victim testified that Harper forced her to withdraw cash from her account at an ATM on Madison Avenue. For about four hours, he held her captive at knifepoint as he smoked cigarettes and stopped at two fast-food restaurants to get a meal and soft drinks. He forced her to perform a sex act on him.

She was driven from one end of Sacramento County to another before ending up near Thornton in a muddy slough. Harper beat her into unconsciousness, slit her throat and set her on fire, causing first- and second-degree burns over nearly a third of her body.

The victim later regained consciousness, wandered onto a nearby roadway and flagged down help.

Forensic evidence linked Harper to the case, including semen and blood. The jury also learned that two rings belonging to the victim were found in pants belonging to Harper, who – after leaving her for dead – used the woman's car to try to elude police in a high-speed chase.

During the two-month-long trial, Deputy District Attorney Michael Neves told the jury of seven men and five women that the woman was victimized during her kidnapping and again during Harper's trial when she testified for three days, weeping as she struggled to avoid eye contact with him.

As a prosecution witness, she was cross-examined by Harper, who tried to discredit her by pointing out discrepancies in her recollection of details. A month later, he called her back to the stand to testify in his defense.

Harper, who has told others he was once beaten up by a group of Mexicans, gets so angry at that memory that he has seizures, evidence showed.

■ ■ ■

The Bee's Ramon Coronado can be reached at (916) 321-1191 or rcoronado@sacbee.com.

4 years for torturing wife near live leopards

By DEVIN SMITH

A Long Island man who brutally beat his wife and chained her naked to a basement stairwell, while leopards roamed nearby, was sentenced to four years in jail yesterday for the vicious and bizarre attack.

After detailing the horrible suffering she endured at the hands of her husband, Anastasia Barone, 32, tearfully begged the judge yesterday to slap him with a five-year prison sentence.

Instead, Suffolk County Judge Robert Doyle sentenced Anthony Barone to four years in jail on weapons raps and charges including assault, unlawful imprisonment and endangering the welfare of a child.

In federal court, Barone pleaded guilty to animal possession and cruelty charges, which will run concurrent to the state convictions.

When law-enforcement officials responded to the Dix Hills home, they found a skinned Rottweiler — whose bones Barone was allegedly saving to boil for his collection — and a decaying lynx carcass sitting in an unplugged freezer, officials said.

Anastasia claimed the sentence doesn't do enough to protect her or her four children, ages 9, 8, 4 and 2.

"The week this defendant gets released from prison, he will hunt me down and kill me," Anastasia warned in a statement. "I have begun to prepare for that day."

On May 20, 2005, Barone — who is obsessed with exotic animals, occult rituals and demonic paraphernalia — beat and abused his wife terribly.

"He kicked me straight in the face with a steel-toed boot, causing me to bleed profusely through my nose and mouth," Anastasia told the court. "My nose was broken and I could barely see.

"This time, I truly believed I would not survive the beating," she added.

As Anastasia slipped in and out of consciousness, Barone ordered her to undress completely. He then used a heavy-gauge chain to padlock her to a stairwell in their basement — as his pair of illegal 50-pound pet leopards prowled in the next room.

The strange crime continued as Barone chopped off most of his wife's hair with a hunting knife, ordered her into the family car, and drove her to Tony's Tattoos Ink, a tattoo parlor he owned in Lynbrook.

He wanted to finish a tattoo across the small of her back with his name on it to remind Anastasia that she was his property, prosecutors said.

Barone then forced Anastasia back into their home and kept her there against her will for nine days. Her aunt, who was also held at the house, escaped and alerted police.

Yesterday, Barone's family claimed that Anastasia bore some of the responsibility for what happened. Their attorney, James Saladino, said the case against his client has been "grossly exaggerated."

"Mrs. Barone has set out to vilify and create the image that he's a monster," Saladino said yesterday. "But it takes two to tango."

Saladino also claimed that by electing to plead guilty instead of putting his children through a traumatic trial, Anthony Barone is the only person who has accepted responsibility in the sad tale.

devin.smith@nypost.com

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ANNALS OF
NATIONAL SECURITY

TORTURE AT ABU GHRAIB

by SEYMOUR M. HERSH

American soldiers brutalized Iraqis. How far up does the responsibility go?

Issue of 2004-05-10
Posted 2004-04-30

In the era of Saddam Hussein, Abu Ghraib, twenty miles west of Baghdad, was one of the world's mo notorious prisons, with torture, weekly executions, and vile living conditions. As many as fifty thousa men and women—no accurate count is possible—were jammed into Abu Ghraib at one time, in twelv by-twelve-foot cells that were little more than human holding pits.

In the looting that followed the regime's collapse, last April, the huge prison complex, by then deserte was stripped of everything that could be removed, including doors, windows, and bricks. The coalitio authorities had the floors tiled, cells cleaned and repaired, and toilets, showers, and a new medical center added. Abu Ghraib was now a U.S. military prison. Most of the prisoners, however—by the fal there were several thousand, including women and teen-agers—were civilians, many of whom had be picked up in random military sweeps and at highway checkpoints. They fell into three loosely defined categories: common criminals; security detainees suspected of "crimes against the coalition"; and a small number of suspected "high-value" leaders of the insurgency against the coalition forces.

Last June, Janis Karpinski, an Army reserve brigadier general, was named commander of the 800th Military Police Brigade and put in charge of military prisons in Iraq. General Karpinski, the only fema commander in the war zone, was an experienced operations and intelligence officer who had served with the Special Forces and in the 1991 Gulf War, but she had never run a prison system. Now she wa in charge of three large jails, eight battalions, and thirty-four hundred Army reservists, most of whom, like her, had no training in handling prisoners.

General Karpinski, who had wanted to be a soldier since she was five, is a business consultant in civilian life, and was enthusiastic about her new job. In an interview last December with the St. Petersburg *Times*, she said that, for many of the Iraqi inmates at Abu Ghraib, "living conditions now a better in prison than at home. At one point we were concerned that they wouldn't want to leave."

A month later, General Karpinski was formally admonished and quietly suspended, and a major investigation into the Army's prison system, authorized by Lieutenant General Ricardo S. Sanchez, th senior commander in Iraq, was under way. A fifty-three-page report, obtained by *The New Yorker*, written by Major General Antonio M. Taguba and not meant for public release, was completed in late February. Its conclusions about the institutional failures of the Army prison system were devastating. Specifically, Taguba found that between October and December of 2003 there were numerous instanc of "sadistic, blatant, and wanton criminal abuses" at Abu Ghraib. This systematic and illegal abuse of detainees, Taguba reported, was perpetrated by soldiers of the 372nd Military Police Company, and al by members of the American intelligence community. (The 372nd was attached to the 320th M.P. Battalion, which reported to Karpinski's brigade headquarters.) Taguba's report listed some of the wrongdoing:

Breaking chemical lights and pouring the phosphoric liquid on detainees; pouring cold water on naked detainees; beating detainees with a broom handle and a chair; threatening male detainees with rape; allowing a military police guard to stitch the wound of a detainee who was injured after being slammed against the wall in his cell; sodomizing

EXHIBIT 13

detainee with a chemical light and perhaps a broom stick, and using military working dogs to frighten and intimidate detainees with threats of attack, and in one instance actually biting a detainee.

There was stunning evidence to support the allegations, Taguba added—"detailed witness statements and the discovery of extremely graphic photographic evidence." Photographs and videos taken by the soldiers as the abuses were happening were not included in his report, Taguba said, because of their "extremely sensitive nature."

The photographs—several of which were broadcast on CBS's "60 Minutes 2" last week—show leering G.I.s taunting naked Iraqi prisoners who are forced to assume humiliating poses. Six suspects—Staff Sergeant Ivan L. Frederick II, known as Chip, who was the senior enlisted man; Specialist Charles A. Graner; Sergeant Javal Davis; Specialist Megan Ambuhl; Specialist Sabrina Harman; and Private Jeremy Sivits—are now facing prosecution in Iraq, on charges that include conspiracy, dereliction of duty, cruelty toward prisoners, maltreatment, assault, and indecent acts. A seventh suspect, Private Lynndie England, was reassigned to Fort Bragg, North Carolina, after becoming pregnant.

The photographs tell it all. In one, Private England, a cigarette dangling from her mouth, is giving a jaunty thumbs-up sign and pointing at the genitals of a young Iraqi, who is naked except for a sandbag over his head, as he masturbates. Three other hooded and naked Iraqi prisoners are shown, hands reflexively crossed over their genitals. A fifth prisoner has his hands at his sides. In another, England stands arm in arm with Specialist Graner; both are grinning and giving the thumbs-up behind a cluster of perhaps seven naked Iraqis, knees bent, piled clumsily on top of each other in a pyramid. There is another photograph of a cluster of naked prisoners, again piled in a pyramid. Near them stands Graner, smiling, his arms crossed; a woman soldier stands in front of him, bending over, and she, too, is smiling. Then, there is another cluster of hooded bodies, with a female soldier standing in front, taking photographs. Yet another photograph shows a kneeling, naked, unhooded male prisoner, head momentarily turned away from the camera, posed to make it appear that he is performing oral sex on another male prisoner, who is naked and hooded.

Such dehumanization is unacceptable in any culture, but it is especially so in the Arab world. Homosexual acts are against Islamic law and it is humiliating for men to be naked in front of other men, Bernard Haykel, a professor of Middle Eastern studies at New York University, explained. "Being put on top of each other and forced to masturbate, being naked in front of each other—it's all a form of torture," Haykel said.

Two Iraqi faces that do appear in the photographs are those of dead men. There is the battered face of prisoner No. 153399, and the bloodied body of another prisoner, wrapped in cellophane and packed in ice. There is a photograph of an empty room, splattered with blood.

The 372nd's abuse of prisoners seemed almost routine—a fact of Army life that the soldiers felt no need to hide. On April 9th, at an Article 32 hearing (the military equivalent of a grand jury) in the case against Sergeant Frederick, at Camp Victory, near Baghdad, one of the witnesses, Specialist Matthew Wisdom, an M.P., told the courtroom what happened when he and other soldiers delivered seven prisoners, hooded and bound, to the so-called "hard site" at Abu Ghraib—seven tiers of cells where the inmates who were considered the most dangerous were housed. The men had been accused of starting a riot in another section of the prison. Wisdom said:

SFC Snider grabbed my prisoner and threw him into a pile. . . . I do not think it was right to put them in a pile. I saw SSG Frederic, SGT Davis and CPL Graner walking around the pile hitting the prisoners. I remember SSG Frederick hitting one prisoner in the side of its [sic] ribcage. The prisoner was no danger to SSG Frederick. . . . I left after that.

When he returned later, Wisdom testified:

I saw two naked detainees, one masturbating to another kneeling with its mouth open. I thought I should just get out of there. I didn't think it was right . . . I saw SSG Frederick walking towards me, and he said, "Look what these animals do when you leave them alone for two seconds." I heard PFC England shout out, "He's getting hard."

Wisdom testified that he told his superiors what had happened, and assumed that "the issue was taken care of." He said, "I just didn't want to be part of anything that looked criminal."

The abuses became public because of the outrage of Specialist Joseph M. Darby, an M.P. whose role emerged during the Article 32 hearing against Chip Frederick. A government witness, Special Agent Scott Bobeck, who is a member of the Army's Criminal Investigation Division, or C.I.D., told the court, according to an abridged transcript made available to me, "The investigation started after SPC Darby . . . got a CD from CPL Graner. . . . He came across pictures of naked detainees." Bobeck said that Darby had "initially put an anonymous letter under our door, then he later came forward and gave a sworn statement. He felt very bad about it and thought it was very wrong."

Questioned further, the Army investigator said that Frederick and his colleagues had not been given any "training guidelines" that he was aware of. The M.P.s in the 372nd had been assigned to routine traffic and police duties upon their arrival in Iraq, in the spring of 2003. In October of 2003, the 372nd was ordered to prison-guard duty at Abu Ghraib. Frederick, at thirty-seven, was far older than his colleagues, and was a natural leader; he had also worked for six years as a guard for the Virginia Department of Corrections. Bobeck explained:

What I got is that SSG Frederick and CPL Graner were road M.P.s and were put in charge because they were civilian prison guards and had knowledge of how things were supposed to be run.

Bobeck also testified that witnesses had said that Frederick, on one occasion, "had punched a detainee in the chest so hard that the detainee almost went into cardiac arrest."

At the Article 32 hearing, the Army informed Frederick and his attorneys, Captain Robert Shuck, an Army lawyer, and Gary Myers, a civilian, that two dozen witnesses they had sought, including General Karpinski and all of Frederick's co-defendants, would not appear. Some had been excused after exercising their Fifth Amendment right; others were deemed to be too far away from the courtroom. "The purpose of an Article 32 hearing is for us to engage witnesses and discover facts," Gary Myers told me. "We ended up with a c.i.d. agent and no alleged victims to examine." After the hearing, the presiding investigative officer ruled that there was sufficient evidence to convene a court-martial against Frederick.

Myers, who was one of the military defense attorneys in the My Lai prosecutions of the nineteen-seventies, told me that his client's defense will be that he was carrying out the orders of his superiors and, in particular, the directions of military intelligence. He said, "Do you really think a group of kids from rural Virginia decided to do this on their own? Decided that the best way to embarrass Arabs and make them talk was to have them walk around nude?"

In letters and e-mails to family members, Frederick repeatedly noted that the military-intelligence teams, which included C.I.A. officers and linguists and interrogation specialists from private defense contractors, were the dominant force inside Abu Ghraib. In a letter written in January, he said:

I questioned some of the things that I saw . . . such things as leaving inmates in their cell with no clothes or in female underpants, handcuffing them to the door of their cell—and the answer I got was, "This is how military intelligence (MI) wants it done." . . . . MI has also instructed us to place a prisoner in an isolation cell with little or no clothes, no toilet or running water, no ventilation or window, for as much as three days.

The military-intelligence officers have "encouraged and told us, 'Great job,' they were now getting positive results and information," Frederick wrote. "CID has been present when the military working dogs were used to intimidate prisoners at MI's request." At one point, Frederick told his family, he pulled aside his superior officer, Lieutenant Colonel Jerry Phillabaum, the commander of the 320th M.P. Battalion, and asked about the mistreatment of prisoners. "His reply was 'Don't worry about it.' "

In November, Frederick wrote, an Iraqi prisoner under the control of what the Abu Ghraib guards called "O.G.A.," or other government agencies—that is, the C.I.A. and its paramilitary employees—was brought to his unit for questioning. "They stressed him out so bad that the man passed away. They put his body in a body bag and packed him in ice for approximately twenty-four hours in the shower. . . . The next day the medics came and put his body on a stretcher, placed a fake IV in his arm and took him away." The dead Iraqi was never entered into the prison's inmate-control system, Frederick recounted, "and therefore never had a number."

Frederick's defense is, of course, highly self-serving. But the complaints in his letters and e-mails home were reinforced by two internal Army reports—Taguba's and one by the Army's chief law-enforcement officer, Provost Marshal Donald Ryder, a major general.

Last fall, General Sanchez ordered Ryder to review the prison system in Iraq and recommend ways to improve it. Ryder's report, filed on November 5th, concluded that there were potential human-rights, training, and manpower issues, system-wide, that needed immediate attention. It also discussed serious concerns about the tension between the missions of the military police assigned to guard the prisoners and the intelligence teams who wanted to interrogate them. Army regulations limit intelligence activity by the M.P.s to passive collection. But something had gone wrong at Abu Ghraib.

There was evidence dating back to the Afghanistan war, the Ryder report said, that M.P.s had worked with intelligence operatives to "set favorable conditions for subsequent interviews"—a euphemism for breaking the will of prisoners. "Such actions generally run counter to the smooth operation of a detention facility, attempting to maintain its population in a compliant and docile state." General Karpinski's brigade, Ryder reported, "has not been directed to change its facility procedures to set the conditions for MI interrogations, nor participate in those interrogations." Ryder called for the establishment of procedures to "define the role of military police soldiers . . .clearly separating the actions of the guards from those of the military intelligence personnel." The officers running the war in Iraq were put on notice.

Ryder undercut his warning, however, by concluding that the situation had not yet reached a crisis point. Though some procedures were flawed, he said, he found "no military police units purposely applying inappropriate confinement practices." His investigation was at best a failure and at worst a coverup.

Taguba, in his report, was polite but direct in refuting his fellow-general. "Unfortunately, many of the systemic problems that surfaced during [Ryder's] assessment are the very same issues that are the subject of this investigation," he wrote. "In fact, many of the abuses suffered by detainees occurred during, or near to, the time of that assessment." The report continued, "Contrary to the findings of MG Ryder's report, I find that personnel assigned to the 372nd MP Company, 800th MP Brigade were directed to change facility procedures to 'set the conditions' for MI interrogations." Army intelligence officers, C.I.A. agents, and private contractors "actively requested that MP guards set physical and mental conditions for favorable interrogation of witnesses."

Taguba backed up his assertion by citing evidence from sworn statements to Army C.I.D. investigators. Specialist Sabrina Harman, one of the accused M.P.s, testified that it was her job to keep detainees awake, including one hooded prisoner who was placed on a box with wires attached to his fingers, toes, and penis. She stated, "MI wanted to get them to talk. It is Graner and Frederick's job to do things for MI and OGA to get these people to talk."

Another witness, Sergeant Javal Davis, who is also one of the accused, told C.I.D. investigators, "I witnessed prisoners in the MI hold section . . . being made to do various things that I would question morally. . . . We were told that they had different rules." Taguba wrote, "Davis also stated that he had heard MI insinuate to the guards to abuse the inmates. When asked what MI said he stated: 'Loosen this guy up for us.' 'Make sure he has a bad night.' 'Make sure he gets the treatment.' " Military intelligence made these comments to Graner and Frederick, Davis said. "The MI staffs to my understanding have been giving Graner compliments . . . statements like, 'Good job, they're breaking down real fast. They answer every question. They're giving out good information.' "

When asked why he did not inform his chain of command about the abuse, Sergeant Davis answered, "Because I assumed that if they were doing things out of the ordinary or outside the guidelines, someone would have said something. Also the wing"—where the abuse took place—"belongs to MI and it appeared MI personnel approved of the abuse."

Another witness, Specialist Jason Kennel, who was not accused of wrongdoing, said, "I saw them nude, but MI would tell us to take away their mattresses, sheets, and clothes." (It was his view, he added, that if M.I. wanted him to do this "they needed to give me paperwork.") Taguba also cited an interview with Adel L. Nakhla, a translator who was an employee of Titan, a civilian contractor. He told of one night when a "bunch of people from MI" watched as a group of handcuffed and shackled inmates were subjected to abuse by Graner and Frederick.

General Taguba saved his harshest words for the military-intelligence officers and private contractors. He recommended that Colonel Thomas Pappas, the commander of one of the M.I. brigades, be reprimanded and receive non-judicial punishment, and that Lieutenant Colonel Steven Jordan, the former director of the Joint Interrogation and Debriefing Center, be relieved of duty and reprimanded. He further urged that a civilian contractor, Steven Stephanowicz, of CACI International, be fired from his Army job, reprimanded, and denied his security clearances for lying to the investigating team and allowing or ordering military policemen "who were not trained in interrogation techniques to facilitate interrogations by 'setting conditions' which were neither authorized" nor in accordance with Army regulations. "He clearly knew his instructions equated to physical abuse," Taguba wrote. He also recommended disciplinary action against a second CACI employee, John Israel. (A spokeswoman for CACI said that the company had "received no formal communication" from the Army about the matter.)

"I suspect," Taguba concluded, that Pappas, Jordan, Stephanowicz, and Israel "were either directly or indirectly responsible for the abuse at Abu Ghraib," and strongly recommended immediate disciplinary action.

The problems inside the Army prison system in Iraq were not hidden from senior commanders. During Karpinski's seven-month tour of duty, Taguba noted, there were at least a dozen officially reported incidents involving escapes, attempted escapes, and other serious security issues that were investigated by officers of the 800th M.P. Brigade. Some of the incidents had led to the killing or wounding of inmates and M.P.s, and resulted in a series of "lessons learned" inquiries within the brigade. Karpinski invariably approved the reports and signed orders calling for changes in day-to-day procedures. But Taguba found that she did not follow up, doing nothing to

insure that the orders were carried out. Had she done so, he added, "cases of abuse may have been prevented."

General Taguba further found that Abu Ghraib was filled beyond capacity, and that the M.P. guard force was significantly undermanned and short of resources. "This imbalance has contributed to the poor living conditions, escapes, and accountability lapses," he wrote. There were gross differences, Taguba said, between the actual number of prisoners on hand and the number officially recorded. A lack of proper screening also meant that many innocent Iraqis were wrongly being detained—indefinitely, it seemed, in some cases. The Taguba study noted that more than sixty per cent of the civilian inmates at Abu Ghraib were deemed not to be a threat to society, which should have enabled them to be released. Karpinski's defense, Taguba said, was that her superior officers "routinely" rejected her recommendations regarding the release of such prisoners.

Karpinski was rarely seen at the prisons she was supposed to be running, Taguba wrote. He also found a wide range of administrative problems, including some that he considered "without precedent in my military career." The soldiers, he added, were "poorly prepared and untrained . . . prior to deployment, at the mobilization site, upon arrival in theater, and throughout the mission."

General Taguba spent more than four hours interviewing Karpinski, whom he described as extremely emotional: "What I found particularly disturbing in her testimony was her complete unwillingness to either understand or accept that many of the problems inherent in the 800th MP Brigade were caused or exacerbated by poor leadership and the refusal of her command to both establish and enforce basic standards and principles among its soldiers."

Taguba recommended that Karpinski and seven brigade military-police officers and enlisted men be relieved of command and formally reprimanded. No criminal proceedings were suggested for Karpinski; apparently, the loss of promotion and the indignity of a public rebuke were seen as enough punishment.

After the story broke on CBS last week, the Pentagon announced that Major General Geoffrey Miller, the new head of the Iraqi prison system, had arrived in Baghdad and was on the job. He had been the commander of the Guantánamo Bay detention center. General Sanchez also authorized an investigation into possible wrongdoing by military and civilian interrogators.

As the international furor grew, senior military officers, and President Bush, insisted that the actions of a few did not reflect the conduct of the military as a whole. Taguba's report, however, amounts to an unsparing study of collective wrongdoing and the failure of Army leadership at the highest levels. The picture he draws of Abu Ghraib is one in which Army regulations and the Geneva conventions were routinely violated, and in which much of the day-to-day management of the prisoners was abdicated to Army military-intelligence units and civilian contract employees. Interrogating prisoners and getting intelligence, including by intimidation and torture, was the priority.

The mistreatment at Abu Ghraib may have done little to further American intelligence, however. Willie J. Rowell, who served for thirty-six years as a C.I.D. agent, told me that the use of force or humiliation with prisoners is invariably counterproductive. "They'll tell you what you want to hear, truth or no truth," Rowell said. " 'You can flog me until I tell you what I know you want me to say.' You don't get righteous information."

Under the fourth Geneva convention, an occupying power can jail civilians who pose an "imperative" security threat, but it must establish a regular procedure for insuring that only civilians who remain a genuine security threat be kept imprisoned. Prisoners have the right to

appeal any internment decision and have their cases reviewed. Human Rights Watch complained to Secretary of Defense Donald Rumsfeld that civilians in Iraq remained in custody month after month with no charges brought against them. Abu Ghraib had become, in effect, another Guantánamo.

As the photographs from Abu Ghraib make clear, these detentions have had enormous consequences: for the imprisoned civilian Iraqis, many of whom had nothing to do with the growing insurgency; for the integrity of the Army; and for the United States' reputation in the world.

Captain Robert Shuck, Frederick's military attorney, closed his defense at the Article 32 hearing last month by saying that the Army was "attempting to have these six soldiers atone for its sins." Similarly, Gary Myers, Frederick's civilian attorney, told me that he would argue at the court-martial that culpability in the case extended far beyond his client. "I'm going to drag every involved intelligence officer and civilian contractor I can find into court," he said. "Do you really believe the Army relieved a general officer because of six soldiers? Not a chance." ✦

EXHIBIT 14

EXHIBIT 15

Courtesy of The New Yorker - Reuters

BACK NEXT
8

Editor's Note: Some images in this gallery may be disturbing because of their violent or graphic nature.

A U.S. soldier points at the genitals of hooded Iraqi prisoners forced to stand in line. The alleged abuses of approximately 20 prisoners took place in November and December last year. President Bush said he "shared a deep disgust that those prisoners were treated the way they were treated."

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AP - Courtesy of The New Yorker

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10

Editor's Note: Some images in this gallery may be disturbing because of their violent or graphic nature.

The latest images from Abu Ghraib prison are reportedly from a member of the 320th Military Police Brigade, the unit implicated in other abuses at the facility, and show guard dogs being used to intimidate a prisoner.

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EXHIBIT 17

60 Minutes - CBS News

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9

Editor's Note: Some images in this gallery may be disturbing because of their violent or graphic nature.

An image broadcast on the CBS show "60 Minutes II" shows naked Iraqi prisoners forced to sit on one another.

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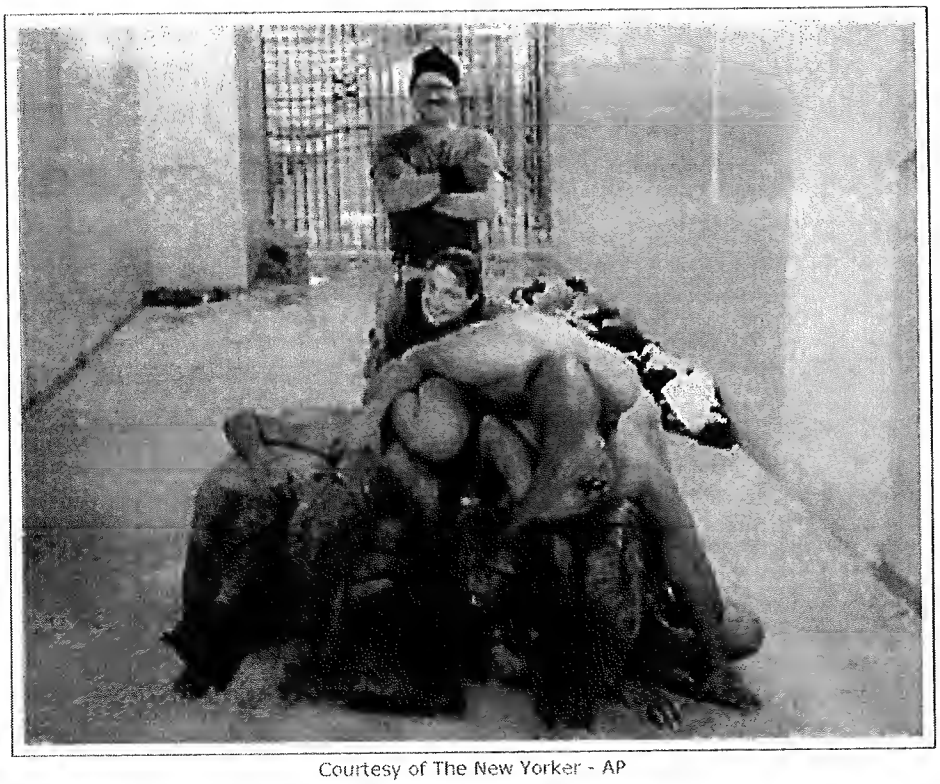

Courtesy of The New Yorker - AP

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Editor's Note: Some images in this gallery may be disturbing because of their violent or graphic nature.

U.S. soldiers stand behind a group of naked iraqi prisoners forced to form a pyramid at the Abu Ghraib prison. Pictures that show detainees being humiliated, such as this one, have enraged the Arab public and others.

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A U.S. soldier looks over a group of bound Iraqi prisoners at the Abu Ghraib prison, where Iraqis were tortured during the rule of Saddam Hussein.

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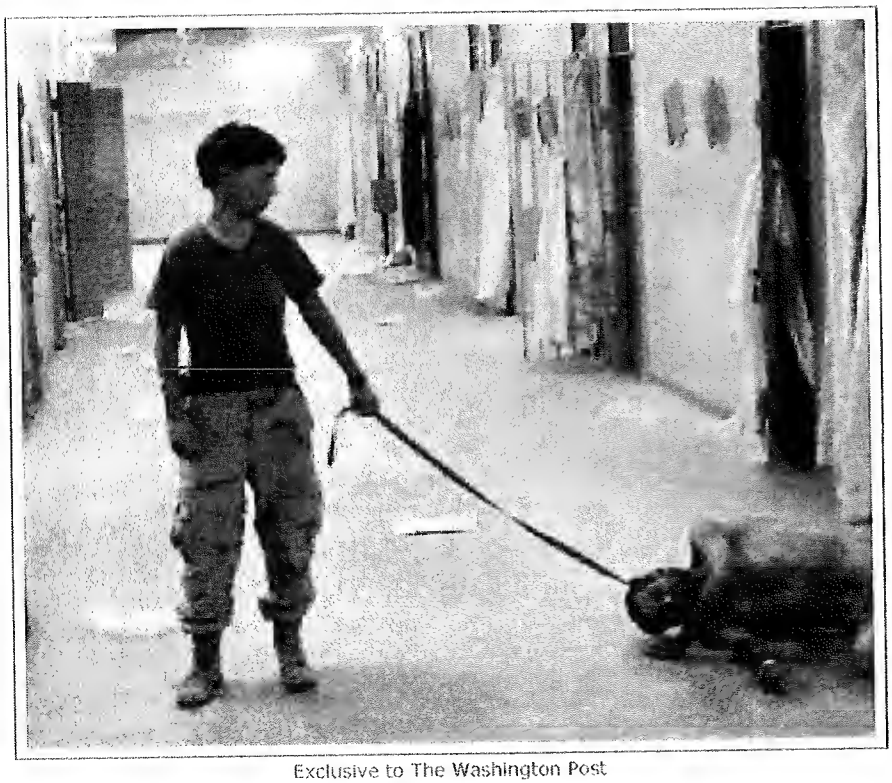

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NEXT ▸▸
1

Editor's Note: Some images in this gallery may be disturbing because of their violent or graphic nature.

Pfc. Lynndie England of the 372nd Military Police Company, an Army Reserve unit based in Cresaptown, Md., holds a leash tied around a naked man's neck at Abu Ghraib prison. The photo was cropped for publication.

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Editor's Note: Some images in this gallery may be disturbing because of their violent or graphic nature.

In this cropped photo, taken at Abu Ghraib, a naked man is handcuffed to a cell door.

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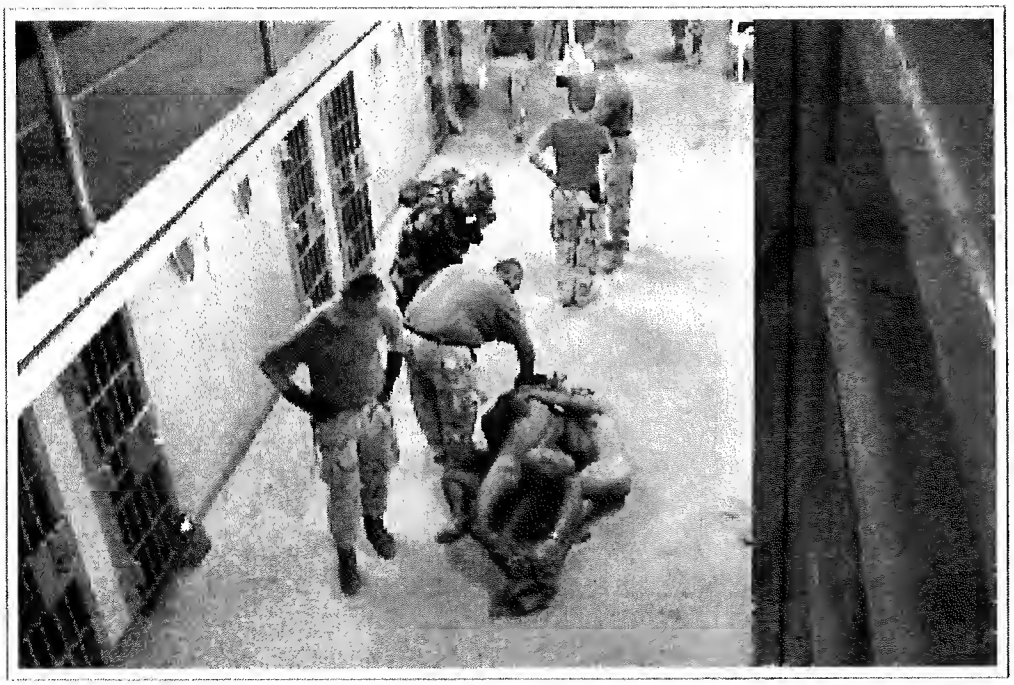

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2

Editor's Note: Some images in this gallery may be disturbing because of their violent or graphic nature.

A group of men lie naked and bound to one another on the walkway in front of the cells at Abu Ghraib prison in Baghdad.

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Courtesy of The New Yorker - AP

Editor's Note: Some images in this gallery may be disturbing because of their violent or graphic nature.

An Iraqi prisoner wearing a hood with wires attached to his body is forced to stand on a box under the threat of electrocution at the Abu Ghraib prison. Seven supervising officers will receive an official reprimand or admonishment and six enlisted soldiers were criminally charged in March, 2004. Four other enlisted soldiers are still under criminal investigation.

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EXHIBIT 25

EXHIBIT 26

EXHIBIT 27

washingtonpost.com

Graner Gets 10 Years for Abuse at Abu Ghraib

Ex-Guard Said He Was Ordered to Mistreat Iraqis

By T.R. Reid
Washington Post Staff Writer
Sunday, January 16, 2005; Page A01

FORT HOOD, Tex., Jan. 15 -- Former Army prison guard Spec. Charles A. Graner Jr. was sentenced to 10 years in a military stockade Saturday for his role in abusing Iraqi prisoners at the Abu Ghraib prison, an episode that sparked a wave of anti-American indignation around the world last spring.

The 10-member military jury passed sentence three hours after hearing Graner deliver an unsworn presentencing statement, not subject to cross-examination, in which he said that superior officers instructed him take actions at the prison that he knew would "violate the Geneva Conventions."

Graner spent 2 1/2 hours laying out an often harrowing tale of a chaotic, Dickensian prison where the rules of permissible conduct were constantly changing and most guards were young reservists with little or no training. At one point, he showed the jury a copy of the Army's "ROE," or "Rules of Engagement," which spelled out four steps of increasing severity for guards to use in controlling unruly inmates: "Shout, Shove, Show [a weapon], Shoot."

Graner also said cellblock "One-Alpha" at the crumbling, overcrowded Army prison housed a number of "ghost detainees" -- prisoners held with no written records so that International Red Cross inspectors would not be aware of them.

His statement added new details about what Graner understood his superiors wanted him to do, and it conformed with the overall picture of widespread abuse and inept management at the Abu Ghraib prison that military investigators and prosecutors have alleged in reports and testimony.

On Friday, Graner was convicted on five charges of assault, maltreatment and conspiracy stemming from the prison scandal. Having waived his right to testify under oath at his trial, when he would have faced a prosecutor's cross-examination, Graner chose instead to address the jury before sentencing.

In addition to the 10-year prison term, out of a possible maximum of 15 years, the jury demoted Graner to private and gave him a dishonorable discharge.

The 36-year-old reservist identified by the Army as the ringleader of the rogue guards at Abu Ghraib reiterated what other witnesses had said during his week-long trial: that numerous senior officers condoned the beatings and humiliation of prisoners at Abu Ghraib.

President Bush has said that the prison abuse was strictly the fault of a handful of junior enlisted soldiers.

EXHIBIT 28

On the night shift at One-Alpha, Graner said, the Army assigned two low-ranking reservists to guard 80 to 100 prisoners, ranging from common criminals to veteran terrorists. He showed a picture of the guards' cellblock "office" -- a closet-size space surrounded by sandbags to protect against the guns and grenades that he said were regularly smuggled to the prisoners.

Graner said the guards were told to "terrorize" the inmates to make it easier for CIA agents and military intelligence officers to question them.

"They would say . . . give this prisoner 30 seconds to eat," Graner recalled. "It's pitch black in your cell. I shine a light in your eyes to blind you. I haul you out, naked, and I hand you the [packed lunch] and the whole time you're trying to eat I'm screaming at you. Then time's up. We gave you the opportunity to eat. You just didn't eat."

Graner worked as a Marine military policeman and as a guard at Pennsylvania's Greene State Correctional Institution before shipping out to Iraq with the Army Reserve. He boasted Saturday about his expertise as a corrections officer, both civilian and military.

"I know the Geneva Conventions, better than anyone else in my company," Graner said. "And we were called upon to violate the Geneva Conventions."

The Conventions, an international treaty covering treatment of prisoners in war zones, have been a subject of hot debate recently. After the Sept. 11, 2001, attacks, White House counsel Alberto R. Gonzales advised the president that the United States could legally ignore the treaty in certain circumstances. Critics in Congress and in legal and military circles have contended that this advice filtered down through the chain of command and contributed to the abuse of prisoners at Abu Ghraib. In November, Bush nominated Gonzales to be attorney general.

Graner named a series of Army officers, ranking from lieutenant to full colonel, who gave orders, he said, to mistreat prisoners -- particularly those described as "intelligence holds" who were believed to have information about the Iraqi insurgency that grew up after the fall of Baghdad. Those he named included Col. Thomas M. Pappas, commander of the 205th Military Intelligence Brigade in charge of the prison; Lt. Col. Steven Jordan, the senior Military Intelligence officer; Capt. Donald J. Reese, commander of the 372nd Military Police Company; Capt. Christopher Brinson, platoon leader; and 1st Lt. Lewis Raeder, platoon leader in the military police command.

Several of the officers he named were also cited in sworn testimony during Graner's trial, the first full-scale court-martial stemming from the Abu Ghraib scandal.

Witnesses in Graner's court-martial said Lt. Col. Jordan was a regular visitor to Graner's cellblock and was aware of all the abuse that led to the criminal charges. The Army says Jordan is under investigation.

Four enlisted soldiers who worked at cellblock One-Alpha have pleaded guilty in the case. Charges are pending against three other enlisted reservists who served at the prison. None of the officers at Abu Ghraib, and no one higher in the chain of command, has faced criminal charges. After charges were brought last year against the enlisted guards, Defense Secretary Donald H. Rumsfeld said "the people who have done something wrong are all being prosecuted."

Graner's lawyer, Guy Womack, complained during the trial that the Army had not called any of the officers who were at the prison to testify.

"The unanswered question," Womack said after the verdict was announced, "is why won't the Army punish any of the officers who were responsible?"

Testimony at the trial suggested that several soldiers who were appalled by the treatment of the inmates were ignored or reassigned when they reported abuse to officers.

Even Army Spec. Joseph Darby, the whistle-blower who has been praised by Rumsfeld for his efforts to stop the Abu Ghraib abuse, said on the witness stand that he did not trust the Army chain of command in Iraq. Darby testified that he thought the abuse should be stopped but did not get a satisfactory response from his superiors. So he gathered photographs of the situation on cellblock One-Alpha, put them in a brown envelope and slipped them anonymously under the door of the Baghdad office of the Army's Criminal Investigation Division. Detectives there, independent of the chain of command, then launched an investigation.

Graner was convicted of various specific acts of abuse, including knocking a blindfolded prisoner unconscious with a punch to the head, smashing an inmate's legs with a steel rod and forcing seven naked inmates to form a human pyramid.

In his rambling presentation to the jury Saturday, Graner said he was willing to accept a jail term for his offenses, but he pleaded with the jury not to discharge him from the Army. "I would ask the panel to give me that chance," he said.

Lynndie England

From Wikipedia, the free encyclopedia


Spc. England posing with Spc. Charles Graner

Lynndie Rana England (born November 8, 1982) is a U.S. Army reservist who served in the 372nd Military Police Company, one of several soldiers convicted by the U.S. Army in connection with the Abu Ghraib torture and prisoner abuse in a Baghdad prison during the Occupation of Iraq.

England held the rank of Specialist in the 372nd Military Police company while serving in Iraq. Along with other soldiers, she was found guilty of inflicting sexual, physical and psychological abuse on Iraqi prisoners of war.

England faced a general court-martial in January 2005 on charges of conspiracy to maltreat prisoners and assault consummated by battery. The formal charges did not mention the word "torture" although many commentators have so described her conduct. On April 30, 2005, England agreed to plead guilty to abuse charges. Her plea bargain would have reduced her maximum sentence from 16 years to 11 years had it been accepted by the federal judge. She would have pleaded guilty to four counts of maltreating prisoners, two counts of conspiracy, and one count of dereliction of duty. In exchange, prosecutors would have dropped two other charges, committing indecent acts and failure to obey a lawful order.

On May 4, 2005 Col. James Pohl tossed out her plea bargain as new testimony by now Pvt. Graner suggested that Pfc. England did not know her actions were wrong at the time. This contradicts Pfc. England's statements of May 2, 2005, when she entered her guilty plea. On September 26, 2005, England was convicted of one count of conspiracy, four counts of maltreating detainees and one count of committing an indecent act. She was acquitted on a second conspiracy count.[1] (http://www.cnn.com/2005/LAW/09/26/prisoner.abuse.england.ap/index.html) England has been sentenced to three years for her crimes and given a dishonorable discharge.

On September 27, 2005, England apologized for appearing in the pictures, though not for the maltreatment and assault she committed on the prisoners.

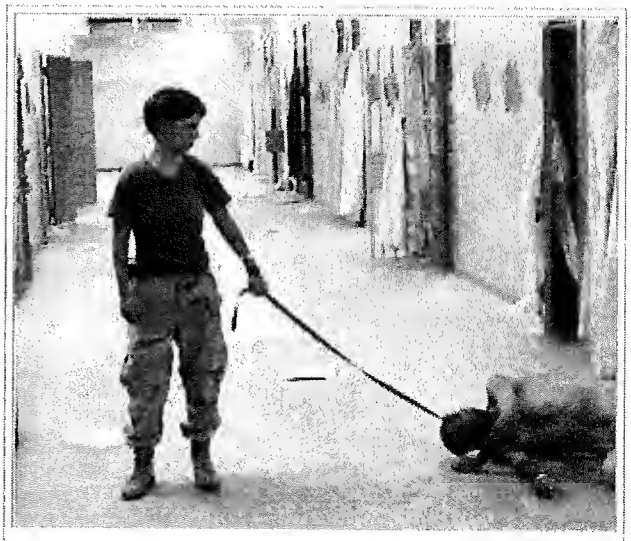
England works in the kitchen of a prison (Naval Consolidated Brig Miramar located at San Diego, California) where she is now confined. Her mother complains she was recently burned and given inadequate medical treatment. [2] (http://today.reuters.com/news/newsarticle.aspx?type=domesticNews&storyid=2005-12-30T001612Z_01_KNE000801_RTRUKOC_0_US-IRAQ-ABUSE-ENGLAND.xml&rpc=22)

Contents

EXHIBIT 29

Biography

Born in Ashland, Kentucky, United States[3]



Spc. England holding a leash attached to a prisoner collapsed on the floor, known to the guards as "Gus"

(http://news.bbc.co.uk/1/hi/world/americas/4490795.stm), England moved with her family to Fort Ashby, West Virginia, when she was two years old. She grew up as the daughter of a railroad worker, Kenneth England, who worked at the station in nearby Cumberland, Maryland, and Terrie Bowling England. At school, Lynndie England, just 5 ft 3 in (157 cm) tall, was known for wearing combat boots and camouflage fatigues.

England joined the Army Reserve in Cumberland in 2001 while she was a junior at Frankfort High School near Short Gap, to escape from a night job in a chicken-processing factory in Moorefield where PETA filmed a chicken abuse video, and to earn money so she could go to college to become a storm chaser. She was also a member of the Future Farmers of America. After graduating from Frankfort High School in 2001, she worked as a cashier in an IGA and married a co-worker, James L. Fike, in 2002, but they later divorced. She was sent to Iraq in 2003.

England was engaged to fellow reservist Charles Graner. She gave birth to a son, Carter Allan England, at 21:25 on October 11, 2004, at Womack Army Medical Center on Fort Bragg. News accounts of the birth referred to Graner as England's "ex-boyfriend".

Charges

England has been charged with abusing Iraqi prisoners of war at the Abu Ghraib prison near Baghdad. She appears in several photographs taken in 2003 at the prison, smiling and pointing at the genitalia of naked and hooded young male prisoners. In some of these photographs she appears alongside Charles Graner, giving the thumbs up in a sexually humiliating shot.

England was initially charged under the Uniform Code of Military Justice with 19 separate violations. Ten of these were in February 2004. She pleaded guilty to seven of these on April 30, 2005:

- Two counts of conspiracy (with Specialist Charles Graner) to commit maltreatment of an Iraqi detainee by posing in a photograph holding a leash around the neck of the detainee;
- Four counts of maltreating Iraqi detainees; and

- One count of dereliction of duty.

The other charges were dropped. These charges included:

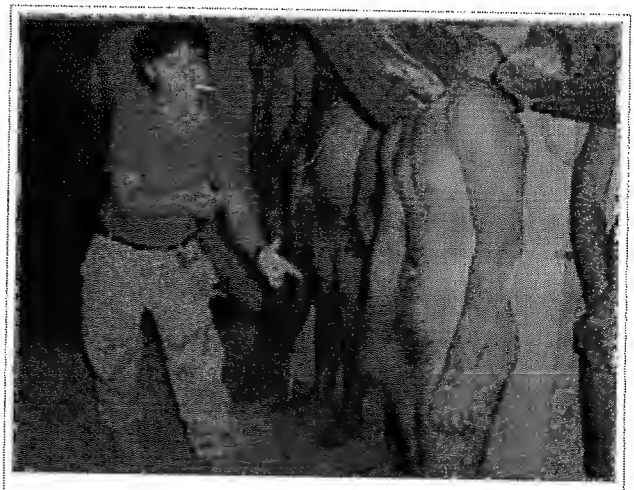
- One count of an indecent act by forcing Iraqi detainees to simulate masturbation;
- One count of failing to obey a lawful order;
- Several counts of committing acts "that were prejudicial to good order and discipline and were of nature to bring discredit upon the armed forces through her mistreatment of Iraqi detainees".

If the judge had accepted her plea bargain, England would have faced a maximum sentence of up to eleven years in prison and a dishonorable discharge.

Court-martial

Even before England was formally charged, she was transferred to the U.S. military installation at Fort Bragg in Fayetteville, North Carolina on May 5, 2004, because of her pregnancy.

England was charged with two counts of conspiracy to maltreat detainees, one count of dereliction of duty, four counts of cruelty and maltreatment and two counts of committing indecent acts at the Abu Ghraib prison in 2003.



Spc. England pointing to naked prisoners

She originally faced 19 criminal counts that could have brought up to 38 years behind bars, but military prosecutors reduced the charges in February, 2005. No explanation was given for the reduction.

At her trial in May 2005, military judge Colonel James Pohl declared a mistrial on the grounds that he could not accept her plea of guilty under a plea-bargain to a charge of conspiring with Spc. Charles Graner Jr. to maltreat detainees after Graner testified that he believed that, in placing a tether around the naked detainee's neck and asking England to pose for a photograph with him, he was documenting a legitimate use of force.

At her retrial, England was convicted on September 26, 2005 of one count of conspiracy, four counts of maltreating detainees and one count of committing an indecent act. She was acquitted on a second conspiracy count. Along with a dishonorable discharge, England received a three-year prison sentence on September 27. The prosecution had asked the jury to imprison England for four to six years. Her defense lawyers asked for no time.

Graner, the alleged ringleader of the abuse, was convicted on all charges earlier this year and sentenced to 10 years in prison. Graner and England were once lovers, and authorities believe he is the father of England's newborn child.

Four guards and two low-level military intelligence officers have made plea deals in the case. Their sentences ranged from no time to 8 1/2 years. No officers have gone to trial, though several received administrative punishment.

Her Family and Friends Make Excuses

Home
News Releases
About HRW
Get Involved
Publications
Info by Country
Africa
Americas
Asia
Europe/Central Asia
Middle East/N. Africa
United States

Global Issues
Arms
Children's Rights
Counterterrorism
Economic, Social & Cultural Rights
HIV/AIDS
International Justice
LGBT Rights
Prisons
Refugees
United Nations
Women's Rights
More...

Campaigns
Film Festival
Photo Galleries
Audio / Video
Site Map
Contact Us
Corrections
Permissions
RSS

Search

index | next>>

I. Summary

On their day off people would show up all the time. Everyone in camp knew if you wanted to work out your frustration you show up at the PUC tent.[1] *In a way it was sport. The cooks were all U.S. soldiers. One day [a sergeant] shows up and tells a PUC to grab a pole. He told him to bend over and broke the guy's leg with a mini Louisville Slugger, a metal bat. He was the fucking cook. He shouldn't be in with no PUCs.*
— 82nd Airborne sergeant, describing events at FOB Mercury, Iraq

If I as an officer think we're not even following the Geneva Conventions, there's something wrong. If officers witness all these things happening, and don't take action, there's something wrong. If another West Pointer tells me he thinks, "Well, hitting somebody might be okay," there's something wrong.
— 82nd Airborne officer, describing confusion in Iraq concerning allowable interrogation techniques

Residents of Fallujah called them "the Murderous Maniacs" because of how they treated Iraqis in detention. They were soldiers of the U.S. Army's 82nd Airborne Division, 1st Battalion, 504th Parachute Infantry Regiment, stationed at Forward Operating Base Mercury (FOB Mercury) in Iraq. The soldiers considered this name a badge of honor.[2]

One officer and two non-commissioned officers (NCOs) of the 82nd Airborne who witnessed abuse, speaking on condition of anonymity, described in multiple interviews with Human Rights Watch how their battalion in 2003-2004 routinely used physical and mental torture as a means of intelligence gathering and for stress relief. One soldier raised his concerns within the army chain of command for 17 months before the Army agreed to undertake an investigation, but only after he had contacted members of Congress and considered goingpublic with the story.

According to their accounts, the torture and other mistreatment of Iraqis in detention was systematic and was known at varying levels of command. Military Intelligence personnel, they said, directed and encouraged army personnel to subject prisoners to forced, repetitive exercise, sometimes to the point of unconsciousness, sleep deprivation for days on end, and exposure to extremes of heat and cold as part of the interrogation process. At least one interrogator beat detainees in front of other soldiers. Soldiers also incorporated daily beatings of detainees in preparation for interrogations. Civilians believed to be from the Central Intelligence Agency (CIA) conducted interrogations out of sight, but not earshot, of soldiers, who heard what they believed were abusive interrogations.

All three soldiers expressed confusion on the proper application of the Geneva Conventions on the laws of armed conflict in the treatment of prisoners. All had served in Afghanistan prior to Iraq and said that contradictory statements by U.S. officials regarding the applicability of the Geneva Conventions in Afghanistan and Iraq (see Conclusion) contributed to their confusion, and ultimately to how they treated prisoners. Although none were still in Iraq when we interviewed them, the NCOs said they believed the practices continue.

The soldiers came forward because of what they described as deep frustration with the military chain of command's failure to view the abuses as symptomatic of broader failures of leadership and respond accordingly. All three are active duty soldiers who wish to continue their military careers. A fax letter, e-mail, and repeated phone calls to the 82nd Airborne Division regarding the major allegations in the report received no response.

When the Abu Ghraib scandal broke in April 2004, senior officials in the Bush administration claimed that severe prisoner abuse was committed only by a few, rogue, poorly trained reserve personnel at a single facility in Iraq. But since then, hundreds of other cases of abuse from Iraq and Afghanistan have come to light, described in U.S. government documents, reports of the International Committee of the Red Cross, media reports, legal documents filed by detainees, and from detainee accounts provided to human rights organizations, including Human Rights Watch.[3] And while the military has launched investigations and prosecutions of lower-ranking personnel for detainee abuse, in most cases the military has used closed administrative hearings to hand down light administrative punishments like pay reductions and reprimands, instead of criminal prosecutions before courts-martial. The military has made no effort to conduct a broader criminal investigation focusing on how military command might have been involved in reported abuse, and the administration continues to insist that reported abuse had nothing to do with the administration's decisions on the applicability of the Geneva Conventions or with any approved interrogation techniques.

These soldiers' firsthand accounts provide further evidence contradicting claims that abuse of detainees by U.S. forces was isolated or spontaneous. The accounts here suggest that the mistreatment of prisoners by the U.S. military is even more widespread than has been acknowledged to date, including among troops belonging to some of the best trained, most decorated, and highly respected units in the U.S. Army. They describe in vivid terms abusive interrogation techniques ordered by Military Intelligence personnel and known to superior officers.

Most important, they demonstrate that U.S. troops on the battlefield were given no clear guidance on how to treat detainees. When the administration sent these soldiers to war in Afghanistan, it threw out the rules they were trained to uphold (embodied in the Geneva Conventions and the U.S. Army Field Manual on Intelligence Interrogation). Instead, President Bush said only that detainees be treated "humanely," not as a requirement of the law but as policy. And no steps were taken to define what humane was supposed to mean in practice.[4] Once in Iraq, their commanders demanded that they extract intelligence from detainees without telling them what was allowed and what was forbidden. Yet when abuses inevitably followed, the administration blamed only low-ranking soldiers instead of taking responsibility.

These soldiers' accounts show how the administration's refusal to insist on adherence to a lawful, long-recognized, and well-defined standard of treatment contributed to the torture of prisoners. It also shows how that policy betrayed the soldiers in the field—sowing confusion in the ranks, exposing them to legal sanction when abuses occurred, and placing in an impossible position all those who wished to behave honorably.

* * *

The officer and NCOs interviewed by Human Rights Watch say that torture of detainees took place almost daily at FOB Mercury during their entire deployment there, from September 2003 to April 2004. While two of the soldiers also reported abuses at FOB Tiger, near the Syrian border, the most egregious incidents allegedly took place at FOB Mercury. The acts of torture and other cruel or inhuman treatment they described include severe beatings (in one incident, a soldier reportedly broke a detainee's leg with a baseball bat), blows and kicks to the face, chest, abdomen, and extremities, and repeated kicks to various parts of the detainees' body; the application of chemical substances to exposed skin and eyes; forced stress positions, such as holding heavy water jugs with arms outstretched,

sometimes to the point of unconsciousness; sleep deprivation; subjecting detainees to extremes of hot and cold; the stacking of detainees into human pyramids; and, the withholding of food (beyond crackers) and water.

According to Army Field Manual 19-4 covering enemy prisoner of war operations, Military Police have responsibility for safeguarding, accounting for, and maintaining captives. The soldiers interviewed by Human Rights Watch said that established procedure was violated by having frontline soldiers guard and prepare detainees for interrogation, instead of speeding detainees to a rear area where they would be looked after by trained Military Police.

Detainees in Iraq were consistently referred to as PUCs. This term was devised in Afghanistan to take the place of the traditional designation of Prisoner of War (POW), after President Bush decided that the Geneva Conventions did not apply there. It carried over to Iraq, even though the U.S. military command and the Bush administration have continually stated that the Geneva Conventions are in effect. Although not all persons captured on a battlefield are entitled to Prisoner of War (POW) status, U.S. military doctrine interprets the Geneva Conventions as requiring that all captured persons be treated as POWs unless and until a "competent tribunal" determines otherwise.[5]

Detainees at FOB Mercury were held in so-called "PUC tents, which were separated from the rest of the base by concertina wire. Detainees typically spent three days at the base before being released or sent to Abu Ghraib. Officers in the Military Intelligence unit and officers in charge of the guards directed the treatment of detainees. Soldiers told us that detainees who did not cooperate with interrogators were sometimes denied water and given only crackers to eat, and were often beaten. There was little done to hide the mistreatment of detainees: one of the soldiers we interviewed observed torture when he brought newly captured Iraqis to the PUC tents.

The torture of detainees reportedly was so widespread and accepted that it became a means of stress relief for soldiers. Soldiers said they felt welcome to come to the PUC tent on their off-hours to "Fuck a PUC" or "Smoke a PUC." "Fucking a PUC" referred to beating a detainee, while "Smoking a PUC" referred to forced physical exertion sometimes to the point of unconsciousness. The soldiers said that when a detainee had a visible injury such as a broken limb due to "fucking" or "smoking," an army physician's assistant would be called to administer an analgesic and fill out the proper paperwork. They said those responsible would state that the detainee was injured during the process of capture and the physician's assistant would sign off on this. Broken bones occurred "every other week" at FOB Mercury.

"Smoking" was not limited to stress relief but was central to the interrogation system employed by the 82nd Airborne Division at FOB Mercury. Officers and NCOs from the Military Intelligence unit would direct guards to "smoke" the detainees prior to an interrogation, and would direct that certain detainees were not to receive sleep, water, or food beyond crackers. Directed "smoking" would last for the 12-24 hours prior to an interrogation. As one soldier put it: "[the military intelligence officer] said he wanted the PUCs so fatigued, so smoked, so demoralized that they want to cooperate."

The soldiers believed that about half of the detainees at Camp Mercury were released because they were not involved in the insurgency, but they left with the physical and mental scars of torture. "If he's a good guy, you know, now he's a bad guy because of the way we treated him," one sergeant told Human Rights Watch.

The soldiers with whom Human Rights Watch spoke had served as guards in Afghanistan and had observed interrogations at FOB Tiger in Iraq, and said that civilian interrogators at those locations had also used coercive methods against prisoners. These interrogators were always referred to by the U.S. military abbreviation OGA, which stands for "Other Government Agencies." It was assumed that such persons were with the CIA, but because OGA also includes other civilian agencies, the soldiers with whom Human Rights Watch

spoke said they could not be sure.

Soldiers generally had less direct access to OGA interrogations, in part because OGA personnel often took detainees to an isolated building and were generally more careful about being seen. But the soldiers who had watched OGA interrogations in Afghanistan said that soldiers applied in Iraq some of the techniques they learned from the OGA, including forced stress positions, sleep deprivation, and exposure. At FOB Tiger, the officer said, he heard the sounds of physical violence coming from rooms where OGA interrogations were being held, but without being present in the room could not know whether the sounds were real or simulated. The soldiers said that civilian interrogators sometimes removed prisoners from detention facilities and took the paperwork that indicated a detainee was being held, apparently "disappearing" that detainee.[6]

The officer who spoke to Human Rights Watch made persistent efforts to raise concerns he had with superior officers up the chain of command and to obtain clearer rules on the proper treatment of prisoners. When he raised the issue with superiors, he was consistently told to keep his mouth shut, turn a blind eye, or consider his career. When he sought clearer procedures from general officers, he was told merely to use his judgment.

Altogether this officer said he spent 17 months trying to clarify rules for prisoner treatment while seeking a meaningful investigation. He explained at length how he openly had brought his complaint directly up the chain-of-command, from his direct commanding officer, to the division commander, to the Judge Advocate General's (JAG) office, and finally to members of the U.S. Congress. In many cases, he was encouraged to keep his concerns quiet; his brigade commander, for example, rebuffed him when he asked for an investigation into these allegations of abuse. He believes he was not taken seriously until he began to approach members of Congress, and, indeed, just days before the publication of this report he was told that he would not be granted a pass to meet on his day off with staff members of U.S. Senators John McCain and John Warner. He said he was told that he was being naïve and that he was risking his career.

Human Rights Watch welcomes reports that the Army has agreed to investigate the abuses discussed in this report. We are concerned however those investigations will only focus on low-level soldiers and officers, instead of looking as far as necessary up the chain of command. We are also concerned that military personnel who come forward to report abuses will find their careers suffer, as their commanding officers implied they would, rather than be commended for doing their duty.

If FOB Mercury is not to become one more in an expanding series of U.S. detention facilities associated with brutality and degrading treatment, further tarnishing the reputation of the U.S. armed forces, the policy failures must be faced head-on and the most senior responsible officials held accountable.

Accordingly, Human Rights Watch urges the following:

- The U.S. Attorney General should appoint a special counsel to investigate any U.S. officials—no matter their rank or position—who have participated in, ordered, or had command responsibility for war crimes or torture, or other prohibited ill-treatment against detainees in U.S. custody.[7]

- The U.S. Congress should create a special commission, along the lines of the 9/11 commission, to investigate the issue of detainee abuse by U.S. military and civilians personnel abroad, including the incidents described here, as proposed in legislation sponsored by Senator Carl Levin.

- Congress should enact legislation along the lines proposed by Senators John McCain, Lindsay Graham, and John Warner, which would prohibit any forms of detainee treatment and interrogation not specifically authorized by the U.S. Army

Field Manual on Intelligence Interrogation, and not consistent with the Convention Against Torture. Such legislation must cover not only military units but also civilian agencies involved in interrogations, such as the CIA.

- The U.S. Department of Defense should conduct a thorough investigation of the allegations made in this report at all levels of the chain of command. Such an investigation must not be limited to lower-ranking enlisted personnel and officers, but must include higher-ranking officers and civilian officials linked to policies that directed, encouraged or tolerated such abuse. Measures should be taken to ensure that soldiers who bring forward credible allegations of detainee abuse are not in any way punished for their actions.

- The 82nd Airborne Division should implement measures to ensure the immediate investigation of credible allegations of detainee abuse.

Note on Presentation of the Soldiers' Accounts

All three accounts below consist of direct quotes from the soldiers. Each of the soldiers was interviewed more than once. For the sake of clarity and to avoid repetition, Human Rights Watch has edited and rearranged specific passages in the accounts.

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[1] "Person Under Control" or PUC (pronounced "puck") is the term used by U.S. military forces to refer to Iraqi detainees.

[2] FOB Mercury is located approximately 10 miles east of Fallujah, a center of the insurgency at the time. U.S. forces came under intense attacks in and around Fallujah, placing them under constant pressure and at high risk in daily combat. As soon as the 82nd pulled out of FOB Mercury in April 2004, the U.S. Marines that replaced the 82nd undertook a major offensive against insurgents in Fallujah.

[3] See Human Rights Watch, "Getting Away with Torture?: Command Responsibility for the U.S. Abuse of Detainees," *A Human Rights Watch Report*, April 2005, Section II (A World of Abuse), available at: hrw.org/reports/2005/us0405/4.htm#_Toc101408092. See also, International Committee of the Red Cross, "Report on the Treatment by the Coalition Forces of Prisoners of War and Other Protected Persons, February 2004, available at: http://www.health-now.org/mediafiles/mediafile50.pdf (describing detainee abuse in locations across Iraq, including sites in Baghdad, Al-Khaim, Tikrit, Ramadi, and at Abu Ghraib, at p 7); Douglas Jehl and Eric Schmitt, "The Conflict in Iraq: Detainees; U.S. Military Says 26 Inmate Deaths May Be Homicide," *The New York Times*, March 16, 2005 (describing cases of detainee homicide occurring in areas across Afghanistan and Iraq). On Afghanistan-related abuses, see Human Rights Watch, "Enduring Freedom: Abuses by U.S. Forces in Afghanistan," *A Human Rights Watch Report*, March 2004, available at hrw.org/reports/2004/afghanistan0304/; Human Rights Watch to Secretary of Defense Donald Rumsfeld, open letter, December 13, 2004, available at: www.hrw.org/english/docs/2004/12/10/afghan9838.htm. On Iraq-related abuses, see Major General Antonio M. Taguba, "Arlicle 15-6 Investigation of the 800th Military Police Brigade," March 2004 (describing "numerous incidents of sadistic, blatant, and wanton criminal abuses" at Abu Ghraib prison, constituting "systematic and illegal abuse of detainees," at p. 16); Major George R. Fay, "Article 15-6 Investigation of the Abu Ghraib Detention Facility and 205th Military Intelligence Brigade," (Documenting 44 allegations of war crimes at Abu Ghraib). On Guantánamo-related abuses, see also Human Rights Watch, "Guantánamo: Detainee Accounts," *A Human Rights Watch Backgrounder*, October 2004, http://www.hrw.org/backgrounder/usa/gitmo1004/. See also, Paisley Dodds, "Guantánamo Tapes Show Teams Punching, Stripping Prisoners," *Associated Press*, February 1, 2005; Neil A. Lewis, "Red Cross Finds Detainee Abuse in Guantánamo," *The New York Times*, November 30, 2004.

[4] See Timothy Flanigan, written responses to questions submitted by U.S. Senator Richard Durbin, following Flanigan's confirmation hearing to be Deputy Attorney General of the United States on July 26, 2005. Flanigan, who was Deputy White House Counsel when President Bush issued his order requiring "humane treatment" of detainees, stated: "I do not believe the term 'inhumane' treatment is susceptible to succinct definition." In a further exchange with Senator Durbin, Flanigan stated that: "I am not aware of any guidance provided by the White House specifically related to the meaning of 'inhumane treatment.'"

[5] Maj. J. Berger, Maj Derek Grims, Maj Eric Jensen (Eds.) *Operational Law Handbook*, International and Operational Law Department, Judge Advocate General's Legal Center and School, Charlottesville Virginia, 2004, p. 26.

[6] According to the U.N. Declaration on the Protection of All Persons from Enforced Disappearance (1992), enforced disappearances occur when:

persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different

branches or levels of Government, ... followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.

[7] To allow the special prosecutor to have full authority to investigate and prosecute both federal law and Uniform Code of Military Justice violations, the Secretary of Defense should appoint a consolidated convening authority for all armed services, to cooperate with the appointed civilian speciat prosecutor.

index | next>>

September 2005

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Home | About Us | News Releases | Publications | Info by Country | Global Issues | Campaigns | What You Can Do | Community | Bookstore | Film Festival | Search | Site Map | Contact Us | Press Contacts | Privacy Policy

<<previous | index | next>>

II. Account of Sergeant A, 82nd Airborne Division

Sergeant A served in Afghanistan from September 2002 to March 2003 and in Iraq from August 2003 to April 2004. Human Rights Watch spoke with him on four separate occasions in July and August 2005.

In retrospect what we did was wrong, but at the time we did what we had to do. Everything we did was accepted, everyone turned their heads.

We got to the camp in August [2003] and set up. We started to go out on missions right away. We didn't start taking PUCs until September. Shit started to go bad right away. On my very first guard shift for my first interrogation that I observed was the first time I saw a PUC pushed to the brink of a stroke or heart attack. At first I was surprised, like, this is what we are allowed to do? This is what we are allowed to get away with? I think the officers knew about it but didn't want to hear about it. They didn't want to know it even existed. But they had to.

On a normal day I was on shift in a PUC tent. When we got these guys we had them sandbagged and zip tied, meaning we had a sandbag on their heads and zip ties [plastic cuffs] on their hands. We took their belongings and tossed them in the PUC tent. We were told why they were there. If I was told they were there sitting on IEDs [Improvised Explosive Devices, homemade bombs] we would fuck them up, put them in stress positions or put them in a tent and withhold water.

The "Murderous Maniacs" was what they called us at our camp because they knew if they got caught by us and got detained by us before they went to Abu Ghraib then it would be hell to pay. They would be just, you know, you couldn't even imagine. It was sort of like I told you when they came in it was like a game. You know, how far could you make this guy goes before he passes out or just collapses on you. From stress positions to keeping them up fucking two days straight, whatever. Deprive them of food water, whatever.

To "Fuck a PUC" means to beat him up. We would give them blows to the head, chest, legs, and stomach, pull them down, kick dirt on them. This happened every day.

To "smoke" someone is to put them in stress positions until they get muscle fatigue and pass out. That happened every day. Some days we would just get bored so we would have everyone sit in a corner and then make them get in a pyramid. This was before Abu Ghraib but just like it. We did that for amusement.

Guard shifts were four hours. We would stress them at least in excess of twelve hours. When I go off shift and the next guy comes we are already stressing the PUC and we let the new guy know what he did and to keep fucking him. We put five-gallon water cans and made them hold them out to where they got muscle fatigue then made them do pushups and jumping jacks until they passed out. We would withhold water for whole guard shifts. And the next guy would too. Then you gotta take them to the john if you give them water

and that was a pain. And we withheld food, giving them the bare minimum like crackers from MREs [Meals Ready to Eat, the military's prepackaged food]. And sleep deprivation was a really big thing.

Someone from [Military Intelligence] told us these guys don't get no sleep. They were directed to get intel [intelligence] from them so we had to set the conditions by banging on their cages, crashing them into the cages, kicking them, kicking dirt, yelling. All that shit. We never stripped them down because this is an all-guy base and that is fucked up shit. We poured cold water on them all the time to where they were soaking wet and we would cover them in dirt and sand. We did the jugs of water where they held them out to collapse all the time. The water and other shit… start[ed] [m]aybe late September, early October, 2003. This was all at Camp Mercury, close to the MEK base[8] like 10 minutes from Fallujah. We would transport the PUCs from Mercury to Abu Ghraib.

None of this happened in Afghanistan. We had MPs [military police] attached to us in Afghanistan so we didn't deal with prisoners. We had no MPs in Iraq. We had to secure prisoners. [Military intelligence] wants to interrogate them and they had to provide guards so we would be the guards. I did missions every day and always came back with 10-15 prisoners. We were told by intel that these guys were bad, but they could be wrong, sometimes they were wrong. I would be told, "These guys were IED trigger men last week." So we would fuck them up. Fuck them up bad. If I was told the guy was caught with a 9mm [handgun] in his car we wouldn't fuck them up too bad – just a little. If we were on patrol and catch a guy that killed my captain or my buddy last week – man, it is human nature. So we fucked them up bad. At the same time we should be held to a higher standard. I know that now. It was wrong. There are a set of standards. But you gotta understand, this was the norm. Everyone would just sweep it under the rug.

What you allowed to happen happened. Trends were accepted. Leadership failed to provide clear guidance so we just developed it. They wanted intel. As long as no PUCs came up dead it happened. We heard rumors of PUCs dying so we were careful. We kept it to broken arms and legs and shit. If a leg was broken you call the PA – the physician's assistant – and told him the PUC got hurt when he was taken. He would get Motrin [a pain reliever] and maybe a sling, but no cast or medical treatment.

In Afghanistan we were attached to Special Forces[9] and saw OGA. We never interacted with them but they would stress guys. We learned how to do it. We saw it when we would guard an interrogation.

I was an Infantry Fire Team Leader. The majority of the time I was out on mission. When not on mission I was riding the PUCs. We should have had MPs. We should have taken them to Abu Ghraib [which] was only 15 fucking minutes drive. But there was no one to talk to in the chain – it just got killed. We would talk among ourselves, say, "This is bad." But no one listened. We should never have been allowed to watch guys we had fought.

FOB Mercury was about as big as a football field. We had a battalion there with three or four companies and attachments. We lived in the buildings of an old Iraqi military compound that we built up with barriers, ACs [air conditioners], and stuff. We had civilian interpreters on post and contractors came every day to fix shit. The contractors were local Iraqis.

The PUCs lived in the PUC area about 200 meters away. It had a triple-strength circle concertina barrier with tents in the middle with another triple-strength concertina perimeter. Inside each was a Hesco basket that is wire that normally has cloth in it. We filled them with dirt to make barriers and some we emptied and buried to use as access points for the Iraqis. This was all inside the confines of the FOB. There was a guard tower behind the PUC tent with two guards. One was always looking at the PUC tent. We never took direct fire but did take regular rocket and mortar attacks. We did not lose anyone but had shrapnel injuries.

On their day off people would show up all the time. Everyone in camp knew if you wanted to work out your frustration you show up at the PUC tent. In a way it was sport. The cooks were all US soldiers. One day a sergeant shows up and tells a PUC to grab a pole. He told him to bend over and broke the guy's leg with a mini Louisville Slugger that was a metal bat. He was the fucking cook. He shouldn't be in with no PUCs. The PA came and said to keep him off the leg. Three days later they transported the PUC to Abu Ghraib. The Louisville Slugger [incident] happened around November 2003, certainly before Christmas.

People would just volunteer just to get their frustrations out. We had guys from all over the base just come to guard PUCs so they could fuck them up. Broken bones didn't happen too often, maybe every other week. The PA would overlook it. I am sure they knew.

The interrogator [a sergeant] worked in the [intelligence] office. He was former Special Forces. He would come into the PUC tent and request a guy by number. Everyone was tagged. He would say, "Give me #22." And we would bring him out. He would smoke the guy and fuck him. He would always say to us, "You didn't see anything, right?" And we would always say, "No, Sergeant."

One day a soldier came to the PUC tent to get his aggravation out and filled his hands with dirt and hit a PUC in the face. He fucked him. That was the communications guy.

One night a guy came and broke chem lights[10] open and beat the PUCs with it. That made them glow in the dark which was real funny but it burned their eyes and their skin was irritated real bad.

If a PUC cooperated Intel would tell us that he was allowed to sleep or got extra food. If he felt the PUC was lying he told us he doesn't get any fucking sleep and gets no food except maybe crackers. And he tells us to smoke him. [Intel] would tell the Lieutenant that he had to smoke the prisoners and that is what we were told to do. No sleep, water, and just crackers. That's it. The point of doing all this was to get them ready for interrogation. [The intelligence officer] said he wanted the PUCs so fatigued, so smoked, so demoralized that they want to cooperate. But half of these guys got released because they didn't do nothing. We sent them back to Fallujah. But if he's a good guy, you know, now he's a bad guy because of the way we treated him.

After Abu Ghraib things toned down. We still did it but we were careful. It is still going on now the same way, I am sure. Maybe not as blatant but it is how we do things.

Each company goes out on a mission and you kick the door down and catch them red handed. We caught them with RPGs [rocket propelled grenades]. So we are going to give you special attention. We yank them off the truck and they hit the ground hard, maybe 5-6 feet down. We took everything and searched them. Then we toss him in the PUC tent with a sandbag on his head and he is zip tied. And he is like that all day and it is 100 degrees in that tent. Once paperwork was done we started to stress them. The five-gallon water can was full of water. We would have people hold out their arms on each side parallel to the ground. After a minute your arms get tired and shake. Then we would take some water out and douse them to get them cold. And the tent is full of dust and they get dirty and caked with it. Then we make them do pushups and jumping jacks. At the end of a guard shift they look like zombies.

We had these new high-speed trailer showers. One guy was the cleaner. He was an Iraqi contractor working on base. We were taking pretty accurate mortar fire and rockets and we were getting nervous. Well one day we found him with a GPS[11] receiver and he is like calling in strikes on us! What the fuck!? We took him but we are pissed because he stabbed us in the back. So we gave him the treatment. We got on him with the jugs and doused him and smoked and fucked him.

[8] Iranian opposition group Mojahedin-e-Khalq, which has a base in Iraq.

[9] The 82nd Airborne Division provided support to Special Operations Forces during operations in Afghanistan in 2002 and 2003.

[10] Chem lights refer to chemical light sticks. While we do not know the exact composition of the ones allegedly used in Iraq, these lights are typically made of a hydrogen peroxide solution mixed with a phenyl oxalate ester and dye for color. Information available at http://science.howstuffworks.com/light-stick2.htm

[11] A GPS, or Global Positioning System receiver, provides the user with location data derived from satellites. This data may be used to target weapons, as the soldier alleges.

<<previous | index | next>>

September 2005

Army abuse case shows lapses

Courts-martial have bogged down after the prison deaths of two Afghan terror suspects in 2002.

By Tim Golden
NEW YORK TIMES

FORT BLISS, Texas – In the chronicle of abuses that has emerged from America's fight against terror, there may be no story more jarring than that of the two young men killed at a U.S. military detention center in Afghanistan in December 2002.

The two Afghans were found dead within days of each other, hanging by their shackled wrists in isolation cells at the prison in Bagram, north of Kabul. An Army investigation showed they were treated harshly by interrogators, deprived of sleep for days and struck so often in the legs by guards that a coroner compared the injuries to being run over by a bus.

But more than a year after the Army began a major push to prosecute those responsible for the abuse of the two men and several other prisoners at Bagram, that effort has faltered badly.

Of 27 soldiers and officers against whom Army investigators had recommended criminal charges, 15 have been prosecuted. Five of those have pleaded guilty to assault and other crimes; the stiffest punishment any of them have received has been five months in a military prison. Only one soldier has been convicted at trial; he was not imprisoned at all.

While military lawyers said the pleas were negotiated in exchange for information or testimony against other soldiers, the prosecution has gained no evident momentum. Four former guards accused of assaulting detainees were acquitted in recent courts-martial. Charges against a fifth former guard were dropped.

In one of the prosecutors' most important tests, the Army last month abandoned its case against Capt. Christopher Beiring, the former military police commander at Bagram and one of the few American officers since 9/11 to face criminal charges related to the abuse of detainees by the officers' subordinates.

"If this case were to go to trial, it would be a big, ugly loser for the government," the Army judge who oversaw Beiring's pretrial inquiry, Lt. Col. Thomas Berg, wrote in a report.

In recommending dismissal of the case, Berg argued that the prosecutors had overreached when they charged Beiring with command failures they could not prove. The judge also highlighted a problem that has frustrated the prosecutors in their effort to hold soldiers accountable for breaking the rules at Bagram: Those rules were not at all clear.

Indeed, more directly than any other episode since the Sept. 11 terrorist attacks, the Bagram cases have exposed the uncertainty and confusion among military interrogators and guards about how they were required to treat terror suspects after President Bush decided in February 2002 that they would not be protected by the Geneva Conventions.

Although the administration issued a general order that detainees should be treated humanely, internal military files on the case show that officers and soldiers at Bagram differed over what specific guidelines, if any, applied. That ambiguity confounded the Army's criminal investigators for months and left the prosecutors vacillating over strategy. It also gave the accused soldiers a defense that has seemed to resonate with some military judges and jurors.

"The president of the United States doesn't know what the rules are," said Capt. Joseph Owens, a lawyer for one of the accused interrogators, Pfc. Damien Corsetti, who is one of two former Bagram soldiers still facing court-martial. "The secretary of defense doesn't know what the rules are. But the government expects this Pfc. to know what the rules are?"

The prosecutors have stumbled over a series of other obstacles as well, some of them plainly visible. After a criminal inquiry that took almost two years, witnesses in the case were scattered, their memories dimmed. A crucial witness in three of the trials changed his story repeatedly, leading to acquittals in each case.

Other potentially important figures who had left the military were largely ignored.

In the modest Fort Bliss courtrooms where the trials have been held, the two Afghan victims have rarely been evoked, except in autopsy photographs. But much testimony focused on hardships faced by the soldiers themselves. As in other recent abuse cases, Army judges and jurors also seemed to consider the soldiers' guilt or innocence with an acute sense of the sacrifices they had made in serving overseas.

Lt. Col. Joseph Simonelli Jr., who sat on the jury for a former Bagram guard who admitted to repeatedly striking one of the detainees who died, was asked after the trial how he had viewed the defendant. The soldier, convicted of maiming, assault and other crimes, was sentenced to only a demotion in rank, and honorably discharged.

"This individual was an American citizen who had been called up," Simonelli, a Fort Bliss battalion commander, said in an interview. "He had volunteered, and when they called upon him to perform his duties in a time of war, he did it without question."

EXHIBIT 32

No jail for 78-year-old who shot at trespassers

By Ryan McCarthy
Democrat staff writer

The 78-year-old Camino man convicted by a jury of six felony counts after shooting at trespassers who came onto his property to search for crystals won't have to serve any jail time under the sentencing Friday by El Dorado County Superior Court Judge James Wagoner.

Paul Phillip Green, who won three bronze stars for his military service in the Korean War, can seek alternatives such as electronic monitoring at home for the 180-day county jail sentence he received.

Green was also sentenced to four years probation and cannot own firearms for at least a decade

» see **NO JAIL**, page A7

NO JAIL

continued from A-1

under the sentence that also reduces the felonies to misdemeanors.

"While I understand how you got into this situation," Judge Wagoner said in court, "I think you exercised poor judgment. This sentence adequately punishes you for that.

"The court has struggled long and hard with this case as to what should be done in the interests of justice," added the judge, who said he wanted to thank the jury panel publicly for its hard work on the case.

Jurors, as they were instructed, decided the case on the facts without regard to punishment or possible penalty, Wagoner said.

"It is the court's responsibility to

» see **NO JAIL**, page A-9

8 Month CD

NO JAIL

continued from A-7

decide what is a fair and just sentence," he said.

Green could have potentially been sentenced to state prison for his convictions on assault with a firearm, shooting an unoccupied vehicle and discharge of a firearm with gross negligence. The six charges covered two separate incidents involving Green firing at the pick-up trucks of the two men who came onto his 47-acre property in Camino.

Green had testified during the trial in Placerville that his wife was very upset by trespassers on their land. Green shot more than a dozen bullets from two firearms in the Jan. 10, 2005, incident, wounding a 27-year-old Placerville man in the leg. Green also shot at the vehicle of a second man, who was not hit.

"The court is mindful that the victims, I will say, are not unknown to this court," Judge Wagoner said. "This might be a different situation if just some average citizens came onto your property."

Wagoner noted that one of the men Green shot at is a convicted felon.

Erik Davenport, the deputy district attorney who prosecuted the case, said in court Friday that, "The behavior of the defendant on that day remains egregious."

"It could have been a murder case — by a few inches," Davenport said.

Defense attorney Jim Clark said, "We thank the court for its leniency and justice in this matter."

Clark said of Green that, "His wife is ill. He spends his days taking care of her."

Maryann A. Wilson
33335 Merritt Road
Menifee, California
92584

16 March 2006

Superior Court of the State of California
County of El Dorado
525 Main Street
Placerville, California, 95667

Attn: Right Honorable Judge Keller

Re: Case name: People v. Richard Hamlin

Your Honor

I am the Aunt of Richard Hamlin.

I believe that near the end of this month Richard is to come before you for sentencing. I also understand that the Jury in reaching their verdicts have found Richard guilty of the charge involving the term 'torture'.

I have known Richard his whole life and have never known him to be violent to anyone let alone his wife. I do not understand what brought about this conduct which is not normal to his nature. For the last 20 years he has been a law abiding husband and father. If anything, he was always extremely protective of his wife and family.

If Richard has broken the law then, like any one of us, he must pay for his actions; but, exactly what long term damage has he done? I understand that both Susan and the children were seen in court and were healthy and getting on with their lives. I have no idea as to what could have caused Richard to act in this manner but I do believe that it must have been something extremely unusual.

Richard poses no threat to society or to his family please take all of this into consideration when sentencing him. If and when he is freed I have invited him to my home to stay until he is able to rebuild his life.

I am also informed that you have the power to dismiss or overturn the charge of 'torture'. I plead with you to do so as the sentence attached to this is completely out of proportion to any harm done.

Yours truly,

Maryann A. Wilson

To Whom it may concern:

I have known Richard Hamblin, having been living with him day + night for the past nine months, and have found him to be a devout Christian. He has organized + given very sound guidance to me personally (+ others) concerning my calling for the Lord. We (Richard + I) have been conducting daily bible studies, which have been very helpful in bringing several young men to know the Lord Jesus. I do not feel that Richard is in any way a threat to his children or his wife. I have found that the desire of his heart is to serve our Lord Jesus Christ.

Sincerely,
Scott Ng
Scott Ng

Colin A. Ross, M.D.
PSYCHIATRIST
1701 GATEWAY, SUITE 349
RICHARDSON, TEXAS 75080-3644

March 14, 2006

Judge Eddie T. Keller
El Dorado County Superior Court
El Dorado, California

Dear Judge Keller,

Re: Richard Hamlin

I appeared in your court on 12/6/05 as a defense expert witness in the Richard Hamlin trial. I am writing to request that you set aside the jury verdict on the torture charge.

I believe that the California legislature did not intend California Penal Code sections 206 and 206.1 to be applied to cases like the Hamlin case.

As I understand it, these sections of the Penal Code were designed to address cases like the Larry Singleton case. In 1978 Larry Singleton chopped the arms off 15-year old Mary Vincent near Modesto and left her to die. She survived. Singleton was released from prison in 1987 after serving seven years, and subsequently murdered 31-year old Roxanne Hayes in Tampa, Florida in 1997. He died in prison in Florida before an execution date had been set.

Penal Code sections 206 and 206.1 are designed to protect the public from extreme assailants such as Larry Singleton, whose acts fall just short of murder. Richard Hamlin poses no such ongoing threat to the public. He is divorced from his wife and has never been accused of any act that remotely approaches the type of violence meant to be covered by 206 and 206.1.

It is particularly important to set aside the torture verdict because Mr. Hamlin was found innocent by the jury on many of the lesser charges. It is clear that the jury considered him innocent of many of the specific actions that he was charged with, and therefore did not understand that the torture charge carries a life sentence. Mr. Hamlin was not found guilty of any specific behavior that would support a torture charge.

It doesn't make any sense that a conviction for the acts of which Mr. Hamlin was found guilty by the jury carries a life sentence when some people convicted of rape and murder spend 5-15 years in jail.

EXHIBIT 36

Office: (972) 918-9588 ▪ Fax: (972) 918-9069 ▪ www.rossinst.com ▪ email: rossinst@rossinst.com

During my work with Mr. Hamlin as a defense expert I spent many hours with him on the phone and also interviewed him in jail. In my opinion, Mr. Hamlin does not pose any ongoing threat to the public, Susan Hamlin or his children. He can be released into the community safely and can become a productive member of society again. I believe it is in the best interests of his children to have an opportunity to rebuild a relationship with him. This would be true in most cases of domestic discord, divorce, and spousal abuse, and in fact most abusive husbands do maintain ongoing relationships with their children, even when they have been convicted.

I believe it is in the best interests of both the Hamlin family and the people of California for the torture conviction to be set aside. Citizens of California should not be sent to jail for life when found guilty of specific acts that ordinarily would result in no jail time or a few years of incarceration. This is a misapplication of the Penal Code sections 206 and 206.1 that I am sure was never intended by the legislature.

Also, although Mr. Hamlin was found guilty on a number of counts, based on the evidence in the case I reviewed, there appeared to be considerable ambiguity and uncertainty concerning even the acts of which he was found guilty. But that is not my primary concern here: my concern is that a life sentence is far out of proportion to the acts of which he was found guilty.

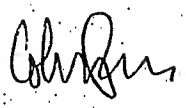
Susan Hamlin never required surgery, intravenous medication, a cast, stitches or other serious medical treatment. She was never knocked unconscious and did not suffer a concussion. She does not allege any ongoing physical problems as a result of Mr. Hamlin's behavior. Set in the context of spousal battery and abuse, which includes rape, murder and severe injury, the acts of which Mr. Hamlin was found guilty are not extreme.

As I testified at trial, my career, including teaching, treatment, writing, speaking and research, has been focused on understanding and treating the serious, long term consequences of child abuse, domestic violence and spousal abuse. I am not an apologist for perpetrators, and I am in favor of legal consequences for criminal behavior. In this case, however, I am convinced that a life sentence for torture is far out of proportion to the acts of which Mr. Hamlin was found guilty, and far out of proportion to the intent of the California legislature.

Richard Hamlin's case highlights the need for revision and clarification of the California Penal Code sections 206 and 206.1.

Thank you.

Sincerely,



Colin A. Ross, M.D.

To whom it may Concern:

My name is Ryan M. Combs and I am an inmate at the El dorado County Jail And I am housed with Mr. Richard Hamlin. Based on the last 3 months that I have spent incarcerated with Hamlin I would have to say that in my own opinion he is a great guy. If it wasnt for his advice me and my wife would be seperated. Not only that but he is the main reson That I found The Lord and he is a great role model on the other inmates and myself. He is always willing to lend a helping hand and give advise. Hamlin is one of the leaders in our pods Bible studies and he alway make sure we understand whats going on he is always willing to take the time to sit down with anyone and talk about anything and help fix any confusion about the Lords word.

Hamlin also is very active in the yard and tries to get everyone in on the games. All and All Hamlin is a great guy and role model.

EXHIBIT 37

Sincerly,
Ryan M Combs

3-9-06

To whom it may concern:

My name is, William Wellman and I have known Richard Hamlin for two full years. first off I will say that his and I have become very close friends and I would not think twice about my trust in his or his opinions. he is a very caring perso and he's always trying to help someone out in any situation. seeing how I am considera younger than he, I have looked to him somewhat as a father figure. I dont believ he is capable of anything as far fetched as torture and what that allegation may constitute. I hope that this letter of my opinion about this fine man, will help to shed light on who he really is. I say all the things with feelings and truth as I see it.

Sincerely,

William Wellman

EXHIBIT 38

3-8-05

to whom it may concern:

In my capicity as Jay pastor & Bible teacher at the El Dorado Co. Jail, I have had time with Richard Hamlin in Bible classes and as Jay pastor - I find Richard well able to step back and see himself and others with an objective point of view.

Richard is faithful to attend church & Bible classes as well as recovery classes where we spend time searching ourselves and our motives, I believe Richard approaches each of these classes with an open mind and a willingness to discover new and important things about himself that will benefit his own life as well as the life

of his family.

I thank you for the time you have taken to read this letter & pray that Richard will find favor where he needs & deserves favor.

Jean Marlow
Jay Foster

Lori Koler, CPS
3057 Briw Road, Suite A
Placerville CA 95667

March 9, 2005

Brad Hamlin
384 Windward Way
Sacramento CA 95831
(916) 392-2892

Lori Koler:

Hello. I am Richard Hamlin's brother and have been in regular contact, in person and on the phone, with Richard since the first week of his arrest. I just want to go on record as saying that I've been extremely impressed with Richard's ongoing positive development in spite of his not being able to see his children. While faced with some very serious charges, he expresses clearly, first and foremost, his extreme concern for the health and welfare of his children. He misses them terribly, and I really believe he should be able to see them—or at the very least write his own kids. I am certain that Richard only has positive things to tell his boys and girls, and as their father, the children would certainly benefit from this experience.

Ryan, Alec, Claire, and Jennifer also have five cousins that would love to see them. I want you to know that we want to help in any way possible. Reunification with their father is top on the list, but the entire family remains deeply concerned and desperate for any information as to the current status of the children.

Please contact me if you have any questions or if you would like to discuss any aspect of bringing about the necessary healing that will help Richard's children move peacefully and safely away from this horrible present dilemma into a positive, healthy, future.

Sincerely,

Brad Hamlin

3-7-05

To whom it may conern,

I am writting this letter on behalf of Richard Hamlin. I would like to bring to your attention the warm and careing person he is. I lived with Mr. Hamlin for almos a year. From the beginning 2004 inti the end. I would like to state that within that year Hamlin's main focas was his kids. Even though Hamlin is fighting a life case of his own, h was always thinking of the well being of his kids. Him and I would talk a lot and many times he would cry to me about how he just wanted contact with his kids so he could know that they were ok and tell ther he loves them.

I think Richard Hamlin should be in contact with his kids. I don't think it would do any harm. I think it is doing them harm by keeping their loving father away from them. Thank you for considering my letter.

Sincerely,

Nicholas Nugent

EXHIBIT 41

March 7, 2005

To Whom It May Concern:

I am Debbie Adragna, a friend and a legal runner for Richard Hamlin. I have known Richard for years and in this time I've seen a great, hard working father that put in a lot of his time into his work so he could provide for his family and their needs.

Richard is a loving, caring, and a devoted father who is devastated by not seeing his children who are the most important thing in his life at this moment. His children and their well-being is his number one concern.

Being his legal runner, I have been working with Richard extensively and I really have got a chance to get to know a father in pain when he speaks about each of his children. The way I have seen him handle his pain and being separated from his children, has been his reliance on his Christian faith. He has spent a lot of his past year while in custody growing in his faith and learning how to become a better parent. He uses his time to better himself as a person and a parent. He has so much love for his children and wants to have a positive role in their lives. I have seen Richard break down and cry.

Richard realizes working so many hours, now he regrets not spending more time at home with his family.

Being a mother myself, I cannot imagine how it feels to be apart from my children. I sincerely hope that Richard Hamlin will reunite with his children soon.

Sincerely,

Debbie Adragna

3/4/05

TO WHOM IT MAY CONCERN

I'M WRITING IN REGUARDS TO RICHARD HAMILTON, I HAVE BEEN FRIENDS WITH RICHARD FOR THE PAST 6 MONTHS. IN THAT TIME PERIOD I HAVE BECAME GOOD FRIND WITH HIM. HE HAS BEEN A VERY GOOD INFLUENCE ON ME DURING THIS TIME OF MY LIFE. I HAVE HEARD ABOUT RICHARD'S CASE AND WHAT HE HAS BEEN THROUGH AND HOW MUCH HE CARE'S ABOUT AND MISSES HIS CHILDREN. ALL HE WANT'S AND ALL HE CARE'S ABOUT ARE HIS KIDS. DURING MY INCARCERATION IN THE ELDORADO COUNTY JAIL I HAVE MET MANY DIFFERENT PEOPLE IN HERE, BUT RICHARD HAS BEEN THE MOST CONSTENT IN WHAT HE BELIEVES. HE HAS HELPED ME BECOME STRONGER IN MY FAITH AS CHRISTIAN FROM THE EXSAMPLE HE HAS SHOWN ME WITH HIS OWN BELIEF AS A CHRISTIAN. OUT OF THE 24 PEOPLE IN THIS POD, RICHARD IS THE MOST RESPECTABLE PERSON HERE.

THANK YOU FOR YOUR TIME

JAKE LOHAN

Vince Lohan

EXHIBIT 43

To whom it may concern: 3-3-05

My name is Henry Moles. I am currently an inmate here at the Eldorado County Jail. I've gotten to know Richard Hamlin on a very personal level. We have had serious disscusions regarding his children. In result of these conversations I have seen nothing but deep sympathy in regards to his children. On a daily basis he never fails to mention to me how much he misses his kids, and how much he loves them. Hes told me of the fun times him and his kids used to have and how tight their relationship was untill this current situation. No matter how bad of a day Hamlin has had, I always see him hold a great attitude. In many ways Hamlin has provided me with fatherly advice that was able to get me through some problems I've had in here. Thats something I have never been able to have because of not having a father in my life. I just want it to be known that unlike others guys I have met here Hamlin puts his kids before himself. My Mom always told me that's what makes a good parent. I've seen as much as a child on a commercial bring tears to his eye's. In my opinion, any kid should be considered privileged to have a caring and loving

EXHIBIT 44

3-3-05

TO WHOM IT MAY CONCERN,

THIS LETTER IS IN REFERENCE TO RICHARD HAMLIN, AND MY OPINION OF HIM AS A FATHER AND ROLE MODEL. I HAVE ONLY KNOWN RICHARD FOR 5 MONTHS NOW, BUT IN THAT TIME, I'VE SPOKEN IN GREAT DETAIL WITH HIM - OF HIS LOVE FOR HIS CHILDREN.

I UNDERSTAND THERE ARE CURRENTLY PROBLEMS, BETWEEN RICHARD AND HIS CHILDREN'S MOTHER. HONESTLY, I HAVE YET TO HEAR RICHARD SPEAK NEGATIVELY ABOUT THE MOTHER, WHEN IT COMES TO ANY CUSTODY ISSUES. I AM A CHILD FROM DIVORCED PARENTS. I CAN REMEMBER THE PAIN AND DISCOMFORT I FELT DURING MY PARENTS ARGUEMENTS AND DISAGREEMENTS. RICHARD HAMLIN HAS SPOKE OF BEING VERY SUPPORTIVE OF HIS CHILDREN'S FEELINGS. I'M SURE OUTSIDE, INVOLVED PARTIES CAN APPRECIATE THIS.

RICHARD HAMLIN HAS ALSO, "TAKEN ME UNDER HIS WING" TO HELP GUIDE ME TOWARDS A CHRISTIAN AND PRODUCTIVE LIFE. THE MAN IS A TRULY LOVING AND GOD-FEARING MAN. I'M SURE HIS CHILDREN HAVE NOTHING BUT GREAT THINGS TO BENEFIT FROM THEIR FATHER. ALL OF THIS... MEANS NOTHING AS TO ALSO, HOW DEEPLY HE LOVES THE CHILDREN.

RESPECTFULLY YOURS,

EXHIBIT 45

March 4, 2006

Judge Eddie Keller
El Dorado County Jail
300 Forni Road
Placerville, CA 95667

Dear Judge Keller:

I am writing in support of my nephew, Richard Hamlin, who is being sentenced by you on March 27th. Although I live and work here in New York City, I have been in touch with him during his life more than many aunts are: my sister was his mother and she died young. I have tried to fill in.

In this situation, my family view of both Susan and Richard is that they have made more bad decisions than I can believe, and those decisions have brought them to this state. I do believe that both were at fault, however, and at this time, it seems that only my nephew is paying a serious price.

Can his past record of extremely hard work, done with no support from his father and mother, be taken as a sign that he can re-do his life and make something of it?

I have seen that work at first hand; I helped him go to law school; I have listened to description of his cases and have been struck with his empathy for his clients. I did not expect it. I expected him to be merely businesslike and found this deeper reaction admirable.

My personal wish is that he get free as soon as possible so that he can begin to re-build himself, both for his sake and the sake of his children. It seems to me that he needs to work on the diagnosis of "narcissism" he received when a psychiatrist first saw him in Placerville.

I have contacted Dr. Nancy Otterness, recommended by a close friend of mine in Sacramento. She told me, when I called her a year or so ago, that her specialty is "lawyers who are in trouble," which seemed to be a rare coincidence.

It would be my wish that my nephew see her on a regular basis when he is out of jail; I know he can handle the task of earning a living, and I will stand behind him in any case, to help him get started.

He has a brother, Bradley, who is married to a thoroughly serious and stable woman and who also lives in Sacramento. Their family is healthy and happy. We want to make sure that Richard's children are that, as well.

I believe this experience in facing judgment has been good for my nephew: he told me of what it felt like to "face the judge and admit that I had done various things" that he was not proud of.

And, in keeping his composure and presenting a defense of his situation, he has shown a steadiness and maturity that has impressed me.

I hope that his situation will be resolved on the side of mercy.

Thank you.

Very truly yours,

Joan Thompson

Patricia Joan Thompson
475 FDR Drive #L1004
New York, NY 10002

RE: Richard Hamlin
P05CRF0161

PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of El Dorado. I am over the age of eighteen years and not a party to the within entitled action; my business address is 630 Main Street, Placerville, California.

On May 1, 2006, I served the within NOTICE OF MOTION AND MOTION OF OBJECTION TO SENTENCE ON GROUND OF CRUEL OR UNUSUAL PUNISHMENT on the parties in said action, by hand:

Vicki Ashworth
EL DORADO COUNTY DISTRICT ATTORNEY
515 Main Street
Placerville, CA 95667

I, TARA J. ANGEL, declare under penalty of perjury, that the foregoing is true and correct.

Executed on May 1, 2006, at Placerville, California.

Tara J. Angel
TARA J. ANGEL

SUPER . COURT OF CALIFORNIA, COU . OF EL DORADO
495 Main Street
Placerville, CA 95667

People of the State of California
VS.
RICHARD WILLIAM HAMLIN

Case No: P04CRF0132

MINUTE ORDER

==========
CALENDAR ADD-ON RE: MOTION
Date: 04/14/06 Time: 10:00 am Dept/Div: 2
==========
Charges: 1) 206 PC-F C, 2) 273A(B) PC-M C, 3) 273A(B) PC-M C, 4) 273A(B)
5) 245(A)(1) PC-F A, 6) 422 PC-F C, 7) 273.5(A) PC-F Q
--- MORE CHARGES for this Case/defendant ---

Honorable Judge EDDIE T. KELLER presiding
Clerk: Dahlgren S.
Court Reporter S. STROMBERG
Bailiff K. SCHMALZ

Deputy District Attorney V. ASHWORTH present.
Defendant is present IN CUSTODY.
Defendant is represented by PRO PER.
Co-Defense Counsel Robert Banning present.

Today is the People's motion to continue the
Judgment and Sentencing date of 05-05-06 due
to late filing by Defense of motions.
Motion is GRANTED.

COURT ORDERS:
J&S hearing set for 05/05/2006 at 13:30 is ordered vacated.
MX hearing set for 05/05/2006 at 13:30 is ordered vacated.

Defense informs the Court they have another
motion to file regarding cruel and unusual
punishment.
COURT ORDERS:
Defense to file their motion(s) by 04-28-06 and
the People have until 06-09-06 to reply.

Time is Waived.
Motion RE: Various set for 06/23/2006 at 13:30 in Department 2.
Time estimate is a "half-day".

CUSTODY STATUS
Remains remanded to the custody of the Sheriff.
Bail to remain as previously set.

CC: DIST ATTY / PUB DEF / RICHARD HAMLIN
In Care Of JAIL / JAIL TRANSPORTATION
==========MINUTE ORDER END==========

Dispo

April 11, 2006

Honorable Eddie T. Keller
Judge, Superior Court
El Dorado County
495 Main Street
Placerville, California 95667

Dear Judge Keller,

My name is Robert Vance and I was juror number six on the Richard Hamlin trial. I writing with my concerns about some of the verdicts rendered and wish to express my deepest concerns that justice may not have been served.

I strongly feel as an American Citizen, that for anyone to be judged by his peers, all the facts must be presented and jury conduct must be above reproach so that the jury has the opportunity to make a fair and just decision beyond a reasonable doubt.

After the trial was over, several of us jurors got together and discussed what we just went through. The gathering was with Juror five, Karen, Juror ten Glenn, and Juror four Alice. Juror's Karen and Alice arrived about 30 minutes after Glenn and myself at the local restaurant and were excited to tell us what they had just discussed with Deputy District Attorney Vickie Ashworth and Detective Strausser as they left the jury room. The subject of the conversation was that Karen had asked point blank if there was drug use in the Hamlin household. They apparently acknowledged to the affirmative. We all said this may be why Richard Hamlin sounded so crazy on the tapes he made. It may also explain how Mrs. Hamlin got some of her injuries. Maybe she fell down the stairs or did slip on a skateboard. We discussed the video of the home and the absolute shoddiness and unkempt state it was in. It also explained all the alcohol bottles that were pretty much everywhere. It also confirms what we as a jury heard on the audio tape of Mrs. Hamlin confessing to detectives very quietly, *"...we were doing drugs and alcohol."* This was represented as "unintelligible" on the transcript. But the jury heard it, and played it several times over to make sure it wasn't something else. The jury discounted it because drug and alcohol abuse or use was never brought up at the trial. Maybe I/we should have weighted that one statement with more vigor.

In addition I was very surprised when jurist Alice mentioned to me at the restaurant that she was surprised *"...that actually believed Richard Hamlins story."* I said, *" we had to consider Richard Hamlin's story just like Mrs. Hamlins, that is what our duties are?* I received a look of disdain which led me to believe that Alice was never really considering Richard Hamlins side of the case.

I have been in touch with the Public Defenders office since the trial, only because they asked me to call them for information and to get my thoughts on the jury conduct and thought process. Since that time I have spoken to Cynthia Hayes several times and she asked me questions regarding jury conduct. I guess I never thought that there were any incidences of jury misconduct. Cynthia has caused me pause for thought and if I may I would like to provide information regarding the jury.

On the first day, after we elected a jury foreperson, some of us wanted to review all the evidence. There was a lot of it and since the trial was long we needed to review our notes. This met with heavy sighs from some of the jurors. Some wanted to vote on all the charges immediately, but myself and at least 5 or 6 other jurors said no! It was pushed by Juror 7 Bob and Juror 12 John for a vote. I believe it was the second day; we took a vote because it was being pushed by several jurors, (12, 7, 4) to vote to see where we stand. I objected because your verbal and written instructions were to "discuss the evidence before voting." This was not done! I and a few other jurors voted Not Guilty on every charge until it was discussed. Some voted abstain. I said *"...he's Not Guilty until proven otherwise so abstaining is not a vote. If you can't say Guilty, then he's Not Guilty."*

Juror twelve, John, stated one day in the jury room, when we were having a hard time with the term "Great Bodily Injury", that *"... he had looked on the internet and couldn't find any definitive information."* I discounted it only because I didn't remember your instructions saying we couldn't use the internet, but we also were instructed to not do research on the trial.

Juror seven Bob, threatened to walk out. Didn't want to discuss any more. Stood up to leave and we convinced him to stay. He apologized the next day and actually was more cooperative, until several days later he got up at around 4:15 pm and walked out because he said "...we weren't going to get anything resolved that day." The jury foreperson adjourned the session for the day. Bob wasn't in the room. He was in the hallway leading from the jury room. I'm convince Bob had his mind made up the minute he saw Richard Hamlin in court. I think he voted guilty on every charge initially.

Juror number four Alice stated near the end of December that she had to use her personnel leave to perform jury duty and her employer was giving her a hard time about being gone so long.

Your Honor, since we as the Jury are not to consider the punishment when determining a verdict in a case, I was shocked when I heard that Torture was life in prison. Child molesters and rapists don't serve this much time. Having to face the possibility of life in prison is like finding out you have terminal cancer. I think a second opinion is warranted!

I was asked by Cynthia Hayes if I would have the same verdicts if I was to do it all over again. Yes, if the evidence was the same. But if there was drug and alcohol abuse by Richard and Susan Hamlin, then the answer is no! I feel strongly that I would have found Richard Hamlin not guilty on more charges and especially on count one.

Thanks for listening and I am available to speak with you in an informal or formal setting at anytime. The statements made are my opinions and the statements made regarding other jurors are to the best of my knowledge and would be testified too under oath to the same.

Sincerely,

Robert C. Vance
Juror 6/Richard Hamlin Trial

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Attorneys for Defendant

SUPERIOR COURT OF CALIFORNIA

COUNTY OF EL DORADO

STATE OF CALIFORNIA,

Plaintiff,

vs.

RICHARD HAMLIN,

Defendant(s).

CASE NO.: P05CRF0161

NOTICE OF MOTION AND MOTION FOR NEW TRIAL

Hearing Date: 5-5-06
Hearing Time: 1:30 p.m
Department: 2

TO: GARY LACY, DISTRICT ATTORNEY OF EL DORADO COUNTY:

NOTICE IS GIVEN that on the date and time above-noted, or as soon thereafter as the matter may be heard, in the above-noted department of the above-entitled court, defendant RICHARD HAMLIN will move pursuant to Penal Code Section 1181 for an order commanding a new trial on several independent grounds. If the Court agrees with any single ground, that finding would be sufficient to grant a new trial.

The motion will be made on the grounds that:

1. Pursuant to Penal Code Sections 1181(2) and 1181(3), juror misconduct denied the Mr. Hamlin the right to have the charges against him determined by a fair and impartial jury as guaranteed under the Sixth and

Fourteenth Amendments to the United States Constitution and Art. I, section 16 of the California Constitution;

2. Pursuant to Penal Code Section 1181(5), the Court has erred in the decision of any question of law arising during the course of the trial; and

3. Pursuant to Penal Code Section 1181(6), the verdict as to Count I, Penal Code Section 206, Torture, is contrary to law or evidence.

This motion is based on this notice of motion, the attached memorandum of points and authorities, the attached exhibits, the transcript of the preliminary hearing, the transcript of the trial, all pleadings, records and files herein, and on such oral and documentary evidence as may be presented at the time of the hearing.

Dated: April 3, 2006.

ROBERT BANNING
Attorney for Defendant

POINTS AND AUTHORITIES

I

PURSUANT TO PENAL CODE SECTIONS 1181(2) AND (3), THE COURT MAY GRANT A NEW TRIAL WHEN JUROR MISCONDUCT OCCURS

Penal Code Sections 1181(2) and (3) provide that the trial court may grant a motion for new trial when the jury "has received any evidence out of court," or when "jury misconduct...(prevents) a fair and due consideration of the case...".

A.

STATEMENT OF FACTS

Juror #2, Patricia Reed, was contacted by defense investigator Cynthia Hayes.

Juror #2 stated that juror #12, John Arnold, during the first week of trial wondered aloud how long the trial was going to take as he thought "a guilty verdict would be a no-brainer...a slam dunk".

Juror #2 also reported that juror #12, John Arnold, told the jury panel that he had done an "on-line computer search to see if he could clarify what 'Great Bodily Injury' meant".

Juror #2 stated juror #12, Mr. Arnold, and juror #7, Robert "Bob" Heissner threatened to walk out of deliberations. Juror #12, Mr. Arnold, threatened to walk out twice, once early on and again later in the last couple of days of deliberation. Juror #7, Mr. Heissner, threatened to leave and actually did leave once. Juror #7 told the other jurors he thought the deliberations were "ridiculous" and became very angry. He then left the jury room, threatening to not come back the next day. The other 11 jurors were forced to stop deliberating.

Juror #2 reported that juror #12, Mr. Arnold, while talking to juror #7, Robert Heissner, said during deliberations "if there were any way to sentence him (Mr. Hamlin) to death, they would".

Additionally, juror #3, Janet Johnson, and juror #6, Robert Vance, also heard juror #12, Mr. Arnold, say that he had done an online compute search to find another definition for "Great Bodily Injury".

Juror #7, Robert Heissner, was contacted by defense investigator Cynthia Hayes and told her that he (Heissner) tried to bring a legal dictionary into the jury room during deliberations. Heissner claims he asked the bailiff if he could take the dictionary into the jury room. The bailiff reportedly said no. Heissner then claims he put the dictionary in his pocket.

The bailiff did not report this incident to the defense.

B.

MULTIPLE ACTS OF JUROR MISCONDUCT HAVE BEEN ESTABLISHED

To establish juror misconduct, the defendant bears the initial burden of proving the impropriety. Upon a showing of a "strong possibility" of juror misconduct, the trial court has the discretion to order an evidentiary hearing at which jurors may be called to testify (People v. Hedgecock (1990) 51 C3d 395). Once the misconduct has been shown, prejudice is presumed (People v. Holloway (1990) 50 C3d 1098). The burden shifts to the prosecution to rebut the presumption, by either proving the allegations false or that there is no "substantial likelihood" that the misconduct "influenced...the vote of one or more of the jurors (People v. Marshall (1990) 50 C3d 907, 950).

"When the misconduct in question supports a finding that there is a substantial likelihood that at least one juror was impermissibly influenced to the defendant's detriment, we are compelled to conclude that the integrity of the trial was undermined, under such circumstances, we cannot conclude that the jury was impartial." (People v. Marshall, supra, at page

951.) Upon such a determination, the motion must be granted "regardless of the probability that a more favorable verdict would or would not have been rendered absent the error." (People v. Sassounian (1986) 182 Cal.App.3d 361, 399.)

People v. Marshall, supra, concludes "that any deficiency that undermines the integrity of a trial...to have an impartial jury, introduces the taint of fundamental unfairness and calls for reversal without consideration of actual prejudice."

The actions of juror #12, John Arnold, clearly constitute juror misconduct, which compels this Court to grant a new trial as to all remaining counts.

In Arnold's first act of misconduct, he states out loud that he wonders how long the trial will take because he thought Mr. Hamlin's guilt was a "no-brainer...a slam dunk".

Arnold's statement is evidence of his disregarding and not following the Court's instructions to presume Mr. Hamlin innocent and not to deliberate until all evidence and argument have been presented to the jury. His statement during the first week of trial clearly demonstrates that he had already abandoned the presumption of innocence and made a deliberative conclusion, even though no evidence had been presented by the defense and despite a cornerstone instruction by this Court.

At the very core of our judicial system is the presumption of innocence which mandates a juror to listen to all the evidence received through direct and cross examination, stipulations, physical evidence, and then listen to all arguments by both sides, before even beginning to deliberate about whether the charges have been proved. During the entire

process of presenting evidence and argument the individual jurors must presume the defendant to be innocent. That cannot change until deliberations begin. At that point the presumption of innocence can be abandoned only if the juror, through the deliberative process, is convinced by the evidence presented during the trial that the defendant has been proved guilty beyond a reasonable doubt.

Mr. Arnold's statement and conduct destroy the fundamental aspects of our jury system. In People v. Galloway (1927) 202 Cal. 81, the Supreme Court stated, "Where a juror has prejudged defendant's guilt before hearing sworn testimony, it cannot be said that the defendant has had a fair trial before an impartial jury and a new trial will be granted."

As People v. Holloway, supra, states:

> Defendant was entitled to be tried by 12, not 11, impartial and unprejudiced jurors, because a defendant charged with a crime has a right to the unanimous verdict of 12 impartial jurors. (Citing People v. Wheeler (1978) 22 C3d 258.)

The fact that Mr. Arnold may have begun without bias but subsequently became biased during the trial makes no difference. As the California Supreme Court stated in People v. Galloway, supra,

> Under 1181 of the Penal Code, subdivision 3, it is within the power of the trial court to grant an accused a new trial because of misconduct of a juror whether such misconduct consists of failure to disclose a prejudicial mind at the time he is sworn or whether such misconduct arises after he is sworn as a member of the trial jury...

Mr. Arnold's statement of prejudgment was made worse by his intentional concealment of his bias, and the non-disclosure by other jurors during the trial. His concealment has eliminated

other measures to correct the problem. Further, one act of misconduct, when concealed, continues and is ongoing until it is revealed.

In Galloway, supra, the court stated,

> Actual bias of a juror becomes, where concealed, positive misconduct and continues to be such throughout such juror's service on the case and if such misconduct is unknown to the accused until after the trial and verdict, the trial court has the power to grant a new trial basing it upon subdivision 3 of section 1181 of the Penal Code.

In People v. Blackwell (1987) 191 Cal.App.3d 925, the Court stated,

> Falsehood or deliberate concealment or nondisclosure of facts or attitudes deprives both sides of the right to select an unbiased jury and erodes the basic integrity of the jury trial process.

In the case of In re Hitchings (1993) 6 C4th 97, a juror met with a friend and discussed the case. The juror's comments that the defendant should be "taken out, strung up or lynched up" were found to be evidence of the juror prejudging the case. The Court found that such conduct created the presumption of prejudice and subsequently found that the prosecution did not rebut that presumption. As a result the Court granted a new trial.

In Hitchings, the juror's statements were evidence that implied a prejudgment. In Mr. Hamlin's case, Mr. Arnold specifically states his prejudgment. Mr. Arnold's statement that Mr. Hamlin was guilty and that such a finding was a "no-brainer...slam dunk", within the first week of taking of evidence violate Penal Code Section 1122 and is misconduct.

"The Penal Code provides that jurors must not converse among themselves or with anyone else on any subject connected

with the trial or to form or express any opinion thereon until the cause is finally submitted to them. Petitioner's jury was so instructed. Violation of this duty is serious misconduct." In re Hitchings, supra.

Furthermore, even one instance of this type of prejudging misconduct is enough to warrant the granting of a new trial. "We also reject Respondent's further claim that a single out of court conversation by a juror does not necessarily affect the juror's ability or impartiality." In re Hitchings, supra.

Mr. Arnold's statement not only is objective evidence of his misconduct; it also calls into question whether Mr. Arnold's statements tainted other jurors. Clearly, Mr. Hamlin's constitutional protection and assurance of being presumed innocent was violated and disregarded by Mr. Arnold, but compounding this violation is the possibility that Mr. Arnold's statement could have caused other jurors to begin their own deliberation process before they were legally entitled to do so.

Mr. Arnold's statement to another juror concerning his belief of Mr. Hamlin's guilt before the case was submitted to the jury additionally violated juror instruction CALJIC 1.03 which states, in part:

> You must not discuss this case with any other person except a fellow juror, and then only after the case is submitted to you for your decision and only when all twelve jurors are present in the jury room.

Separately, Mr. Arnold committed another act of juror misconduct that by itself also compels the court to grant a new trial.

After deliberations had begun and the jury was instructed by the Court, Mr. Arnold, outside the presence of other jurors,

performed an "on-line computer search to clarify what Great Bodily Injury meant". He told fellow jurors about his search the next day.

Mr. Arnold's action violates the Court's instructions, specifically CALJIC 1.03, which states in relevant part,

> You must decide all questions of fact in this case from the evidence received in this trial and not from any other source. You must not independently investigate the facts of the law. This means, for example, that you must not on your own consult reference works or persons for additional information.

Once again, Mr. Arnold's conduct violates one of the most fundamental and important aspects of a jury trial. Simply put, all parties are bound by one set of rules and definitions. The Court and counsel spend a significant amount of time preparing and arguing about which jury instructions will be presented to the jury. These instructions set forth the agreed upon rules and definitions which will determine if the charges can be proved beyond a reasonable doubt. Much of the attorneys' presentation of evidence and closing argument is dictated by the definitions set forth in the jury instructions.

Thus, the significance of a juror independently investigating the law by seeking out further, additional or a different definition of terms is self-evident. Such misconduct obliterates the safeguards and directives of the Court and destroys the defendant's ability to have a fair trial.

In this case, Mr. Arnold's misconduct cannot be overstated. He sought out independently to find further information concerning the definition of "Great Bodily Injury" that is an element in the majority of the 18 counts charged. Notably, Great Bodily Injury is an element of Count I, Penal Code Section

206, Torture, that carries a mandatory life term. The Great Bodily Injury element must be proved beyond a reasonable doubt in order to convict.

The jury was instructed on the definition of Great Bodily Injury as part of the initial juror instructions and additionally in response to Jury Question #13 (see Exhibit 1) concerning the definition of Great Bodily Injury during deliberations. Despite the Court's specific instructions Mr. Arnold still sought out a different definition.

Case law is very clear on this point; it is misconduct for a juror to do his own investigation of the facts or law. He must only consider what has been approved by the Court and counsel and submitted to the jury.

People v. Holloway, supra, stated, "Jurors in a criminal action are sworn to render a true verdict to the evidence. They cannot under oath which they take, receive impressions from any other source."

In re Stankewitz (1985) 40 C3d 391, stated: "Of course, the introduction of extraneous law, whether erroneous or not, constitutes misconduct." At page 397, the Court stated, "When extraneous law enters a jury room---i.e. a statement of law not given to the jury in the instructions of the Court---the defendant is denied his constitutional right to a fair trial unless the People can prove that no actual prejudice resulted."

In Stankewitz, the Court found misconduct and ordered a new trial be granted when a juror who had been a police officer told jurors what he knew the law to be concerning the definition of robbery. The Court found at page 399 that the juror "violated

the Court's instructions and consulted his own outside experience as a police officer on a question of law."

The Court in Stankewitz made it very clear that seeking any outside source concerning fact or law is misconduct:

> In our system of justice it is the trial court that determines the law to be applied to the facts of the case and the jury is bound to receive as law what is laid down by the court (Penal Code Section 1126). Of course it is a fundamental and historic precept of our judicial system that jurors are restricted solely to the determination of factual questions and are bound by the law as given them by the court. They are not allowed either to determine what the law is or what the law should be.

In Stankewitz the Court further found that the juror's misconduct created a presumption of prejudice that "is even stronger when, as here, the misconduct goes to a key issue in the case: the resolution of the question whether a robbery took place was critical to the prosecution's felony murder theory, to the separate robbery count and to the robbery special circumstances allegation."

The same must be found in Mr. Hamlin's case. Mr. Arnold's misconduct is even more severe as it went to the key issue in the case, Great Bodily Injury. The definition of Great Bodily Injury was a key element in many of the offenses charged including Count I, torture, which carries a mandatory life term.

Stankewitz cites as persuasive authority State v. Sinegal Louisiana, 1981) 393 So2d 684, where the Court vacated the defendant's first degree murder conviction because during deliberations the jury had examined an obsolete law book and found an annotation on point. The Court reasoned that "the law applied by the jury must come only from the Court as law given or the defendant does not receive a fair trial."

In the case of People v. Honeycutt (1977) 20 C3d 150, the Court held it was,

> Egregious misconduct for a juror, during deliberations, to consult an outside attorney on certain questions of law involved in the case, even though the advice of the attorney was largely correct and the errant juror did not convey it to other members of the panel.
>
> Such conduct in clear violation of the trial court's admonitions interjects outside views into the jury room and creates a high potential for prejudice. We cannot condone a practice whereby a juror receives outside counseling relative to the applicable law, as to do so would subordinate the court's evaluation of the law to that of the juror's outside source and would be contrary to legislative directives that the Court shall instruct on the applicable law (Penal Code Section 1127) and maintain control of the proceedings (Penal Code Section 1044).

In Honeycutt the Court reversed the conviction and ordered a new trial.

In People v. Harper (1986) 186 Cal.App.3d 420, a juror went to a dictionary outside the presence of jurors and looked up the definitions of murder. He then recited to his fellow jurors the dictionary definition of murder. The facts surrounding what led up to the juror conducting his research is also strikingly similar to what led up to Mr. Arnold conducting his research. In Harper, the Court received a note from the jury stating,

> Judge Creede, we have reached a stalemate. Although you have read the instructions on first and second degree murder so many times, there is among us those who cannot understand it or are trying to interpret the law under their own definitions. Someone actually looked murder up in a dictionary. We cannot seem to change or clarify this thinking even after hours of argument. What can we do?

In Mr. Hamlin's case the definition of Great Bodily Injury was debated heavily amongst the jurors. There were several questions about injuries and then the jury wrote question #13 (see Exhibit #1).

> We disagree amongst ourselves what sort of injury constitutes "great bodily injury". Other than there

> being "significant or substantial bodily injury or damage". Is there any criteria that makes an injury fall under "great bodily injury"? We are having trouble deciding on six counts because we don't agree.

What is evident from the revelation of Juror #2, Patricia Reed, and the notes the jurors were sending is that the jury was having difficulty coming to an agreement concerning what constituted Great Bodily Injury. This was further evident by the foreperson's comment to this Court "that what's great bodily injury to one juror is not great bodily injury to another."

Just as in Harper, Mr. Arnold decided to take it upon himself to look up definitions other than what this Court gave the jury. Mr. Arnold's wrongful decision, to do an online search for the definition of Great Bodily Injury, is consistent with his disregard of this Court's instructions throughout the trial.

In Harper, the Court found that the juror's action was misconduct and that the presumption of prejudice did apply. The Court found that the presumption was rebutted because the jury reported the misconduct before a verdict and the trial court took prompt corrective measures.

The concealment of Mr. Arnold's actions by Mr. Arnold and other jurors eliminated this Court's ability to correct this misconduct except for now granting a new trial.

In Harper the Court clearly made the point that the only reason the presumption was rebutted was because it was able to deal with the misconduct before a verdict with a prompt corrective admonition.

The additional problem that is created by juror concealment of misconduct was also addressed in Holloway, supra:

> Also the juror's silence exacerbated the matter since he did not divulge his improperly obtained knowledge in time for the trial court to take curative steps, such as replacement of the juror with an alternate or giving a limiting instruction or admonition.

Overall, these cases clearly demonstrate that Mr. Arnold's actions constitute juror misconduct. Some of the cited cases are strikingly similar factually to Mr. Hamlin's case. Based on Mr. Arnold's misconduct this Court must find a presumption of prejudice that shifts the burden to the prosecution to prove that no misconduct occurred.

If the prosecution attempts to argue that Mr. Arnold was not affected by what he researched, that position is not legally available to them.

Under Evidence Code Section 1150 neither side can inquire into a juror's thought process about the verdict. In Holloway, supra, the Court stated,

> A juror is not allowed to say: "I acknowledge to grave misconduct. I received evidence without the presence of the Court, but those matters had no influence upon my mind when casting my vote in the jury room". The law in its wisdom does not allow a juror to purge himself in that way... A juryman cannot be permitted to testify how far that influence operated on his mind.... That principle now embodied in Evidence Code Section 1150.

Lastly, the prosecution will not be able to say Mr. Arnold did not find anything. Even if Mr. Arnold did the most basic of searches, typing in the phrase "Great Bodily Injury", a number of hits pop up. The defense ran such a computer search and has attached the example (Exhibit #2). Legal definitions, not the same as the jury instructions from this Court, appear. Even in the unlikely scenario that Mr. Arnold began to search and went no further, the initial definitions contaminate him as a juror.

If this Court examines the totality of Mr. Arnold's actions

it reflects a stunning disregard for the rules and instructions put forth by this Court.

Clearly, in either circumstance, Mr. Arnold's statements reflecting prejudgment or his computer search would have caused this Court to have him replaced as a juror if it was immediately brought to the Court's attention. The defense should be availed the only remedy which now corrects Mr. Arnold's misconduct and that is the granting of a new trial.

The third act of misconduct committed by juror #12, Mr. Arnold, is yet another separate ground mandating this Court to grant a new trial. As juror #2, Patricia Reed, stated she overheard a conversation between jurors John Arnold, Robert Heissner, and Karen Lobaugh in which she heard that Mr. Hamlin should be sentenced to death.

Such comments are evidence that they have prejudged the case and are deciding whether the prosecution has proved its case against Mr. Hamlin based on prejudice and/or bias against him. Jurors are prohibited from being prejudiced or biased against a defendant pursuant to CALJIC 1.00, which was read to the jurors as a part of the court's instructions.

In relevant part CALJIC 1.00 states,

> You must not be influenced by...prejudice against a defendant.... You must not be influenced by sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling.

Clearly, jurors who state that a defendant should be put to death during deliberations, in a non-capital non-homicide case, are objectively expressing their prejudice, passion and bias against the accused.

In such a situation, if the misconduct had been made known

to this Court, an admonition or replacement of the juror(s) would have been available and would have protected the sanctity of an unbiased verdict being rendered. In reality there are three jurors objectively expressing their prejudice and bias against Mr. Hamlin and nothing was done to stop that misconduct.

The statement also reflects evidence of John Arnold's prejudgment of Mr. Hamlin. The statement that was made of wanting to sentence Mr. Hamlin to death is very similar to statements made in In re Hitchings, supra, by the juror in that case. A juror met with a friend during the trial and said about the defendant, that he,

> Deserved to be taken out, strung up or lynched up. He needed to have his-be sexually abused, cut up.... She felt an eye for an eye, tooth for a tooth and that's what happened to these people so he deserved it, too. (page 117.)

The Court found that the juror's statements were evidence that "appear reasonably probable" that the juror "had prejudged the case". The Court found juror misconduct and ordered the trial court to grant a new trial.

Mr. Arnold's statement should be treated as the same type of statement as the juror made in Hitchings and accordingly be declared misconduct.

This Court should look at these statements in their proper context as well. This was not an isolated act of misconduct by Mr. Arnold. This is evidence of an ongoing pattern of absolute disregard for this Court's orders and Mr. Hamlin's constitutional protections. These statements reflect who Mr. Arnold is. Stating that Mr. Hamlin was guilty early in the trial, doing an online search for a different definition of

Great Bodily Injury, and, finally, saying he thought Mr. Hamlin should get the death penalty displays horrendous and gross misconduct that must not be tolerated by this Court.

Mr. Arnold was not the only juror to commit misconduct. Juror #7, Robert Heissner, who was an ally of Mr. Arnold's, also disregarded the law and the Court's instruction prohibiting him from seeking an outside source for clarity on the law.

Mr. Heissner spoke to defense investigator Cynthia Hayes and admitted that he had brought either a regular dictionary or a law dictionary with him to Court to use for definitions. Heissner claims he asked the bailiff before entering the deliberation room whether he could take it with him. He claims the bailiff said no and he then surrendered the dictionary to the bailiff. When contacted subsequently Heissner claimed the bailiff did not take the dictionary but that he (Heissner) put it in his pocket and left it there. The defense was never told of this incident during deliberations by the bailiff or the Court. The defense does not know if the bailiff told the Court of this incident.

As previously cited, People v. Harper, supra, is directly on point as it, too, dealt with a juror going to a dictionary to look up a definition. In Harper the Court found such an act to be juror misconduct and found a "presumption of prejudice".

This Court must do the same.

Mr. Heissner, like Mr. Arnold, went outside of the jury and the Court's instructions to seek an impermissible definition. The fact that Mr. Heissner did not share with the jury what he found has no legal affect. As primarily cited in connection

with Mr. Arnold's online search for a legal definition, People v. Honeycutt, supra, held it was misconduct for one juror to have sought out advice on the law even if he did not share that information with other jurors.

Mr. Heissner's misconduct is virtually impossible for the prosecution to rebut. Heissner admits the misconduct and made the bailiff aware of his possession of the dictionary, so no claim can be made that it did not happen. Mr. Heissner didn't just bring a dictionary to the jury room without a reason; he brought it to share with other jurors what he had found.

Once Heissner looked into a dictionary to look up definitions of elements of offenses that the Court had already instructed on, he is contaminated and the presumption of prejudice cannot be rebutted.

Finally, as previously argued regarding Arnold's misconduct, Evidence Code Section 1150 precludes Heissner from now claiming his misconduct had no impact on his verdict.

To compound the problem, nothing was revealed to the defense. The defense would have immediately asked for the juror to be questioned. At that point this Court would have had several options: removal of the juror, a prompt admonition to Mr. Heissner and the rest of the jury, or possibly declaring a mistrial.

The bailiff should have promptly reported this immediately to the Court and the defense should have been immediately notified. Failure to do so has once again allowed concealment to eliminate corrective measures and has denied Mr. Hamlin the right to a fair trial.

Clearly admonition and removal of jurors was needed at the very least to stop an atmosphere of disregard of this Court's instructions. For whatever reason, jurors Arnold and Heissner felt very comfortable breaking the law in regard to seeking out information from outside sources concerning questions of law.

Yet another separate act of juror misconduct involves Mr. Heissner's and Mr. Arnold's behavior in the jury room during jury deliberations.

Juror number 2, Patricia Reed, and juror number 6, Robert Vance, revealed that both Mr. Heissner and Mr. Arnold threatened to walk out of deliberations on multiple occasions. In fact, Mr. Heissner actually did leave the jury room on one occasion without notifying the Court. Ms. Reed reported that when Mr. Heissner left, it was towards the end of the day and Mr. Heissner became very angry. Ms. Reed states that Mr. Heissner said something like, "I'm not going to do this anymore" and walked out saying he wasn't going to come back. After Mr. Heissner left, the rest of the jury departed soon thereafter.

Ms. Reed states that Mr. Arnold threatened to leave on two occasions, once early on in the deliberations and again in the last couple of days of deliberations.

These actions by both Mr. Heissner and Mr. Arnold represent two different violations. When Mr. Heissner left on his own, he specifically violated Penal Code Section 1181(3):

> When a verdict has been rendered or a finding made against the defendant, the court may, upon his application grant a new trial in the following cases only:
>
> (3) When the jury has separated without leave of the court after retiring to deliberate.

More problematic is the fact that Mr. Heissner's and Mr.

Arnold's actions constituted a refusal to deliberate. A jury can only deliberate when all 12 members are convened in the jury room. When one member takes it upon himself to leave on his own, he is personally stopping deliberations and making it impossible for the jury to function.

The same can be said of Mr. Heissner's and Mr. Arnold's threats to walk out. They are controlling the ability of the jury to deliberate. Their refusal to deliberate was made because other jurors were not agreeing with their position of Mr. Hamlin being guilty.

Once again, if these actions were reported to this Court more likely than not this Court would have replaced these jurors with alternates due to Mr. Heissner's and Mr. Arnold's failure to deliberate. Such a corrective measure by the court is long recognized for the act of juror misconduct in not deliberating. At the core of a jury system is deliberation. A juror who refuses to participate in that system destroys the system.

The defense would ask this Court to examine each act of misconduct separately. The defense believes that each act on its own constitutes misconduct which creates the presumption of prejudice which the prosecution cannot rebut. However, if there is any question about each separate act of misconduct, this Court may examine the record as a whole.

In that regard, the misconduct of both Mr. Arnold and Mr. Heissner taken as a whole is evidence of ongoing and continuous misconduct that obliterated Mr. Hamlin's constitutional right to a fair and impartial jury trial.

Between these two individuals, they prejudged the evidence

before it was submitted to the jury, they disregarded the presumption of innocence of Mr. Hamlin, they sought out prohibited sources to obtain different legal definitions to help improperly persuade jurors to find Mr. Hamlin guilty, they bullied other jurors by threatening to walk out of deliberations if others did not agree with them and one of them, in fact, did walk out and did not deliberate as directed by the law.

Lastly, and perhaps the most frightening act by both jurors, is that they concealed their misconduct. But for honorable jurors who spoke out and came forward, these constitutional violations would have gone unknown in a case where a man could be sentenced to life in prison.

Their actions made a mockery of the deliberative process and their actions demand that this Court grant the defense's request for a new trial.

II

PURSUANT TO PENAL CODE SECTION 1181(5) A NEW TRIAL SHOULD BE GRANTED WHEN THE COURT HAS ERRED IN THE DECISION OF ANY QUESTION OF LAW ARISING DURING THE COURSE OF THE TRIAL

A

JUDGE KELLER RELIED ON AN IMPROPER EVIDENCE CODE SECTION TO EXCLUDE DEFENSE WITNESS MARCEL MATLEY

The defense offered and called as an expert witness Marcel

Matley. Mr. Matley's area of expertise is in handwriting analysis, specifically whether a particular writing was completed under duress. This Court found Mr. Matley to be an expert and the prosecution did not present a Kelly-Frye objection nor did this Court find a Kelly-Frye violation.

Judge Keller excluded Mr. Matley based on Evidence Code Section 800.

Judge Keller's decision to exclude Mr. Matley based on Evidence Code Section 800 was error because section 800 applies to "Lay Witnesses", not expert witnesses. Section 800 states,

> If a witness is not testifying as an expert, his testimony in the form of an opinion is limited to such an opinion as is permitted by law, including but not limited to an opinion that is:
>
> (a) Rationally based on the perception of the witness; and
>
> (b) Helpful to a clear understanding of his testimony.

Clearly, Evidence Code Section 800 applies to WITNESSES NOT TESTIFYING AS AN EXPERT. Thus, the court's reliance on this code section is wrong as a matter of law.

After a lengthy hearing on Mr. Matley's qualifications, which included years of study, actual work, controlled studies and prior qualification as an expert witness, this Court at page 369, line 24, of the trial transcript states,

> The Court: "Well, you know, he (Matley) obviously has expertise in the handwriting examination area. He has less experience in this whole stress area."

The Court again said at page 370, line 14,

> The Court: "He (Matley) obviously has some expertise in this area (whether a writing was made under

duress) but it's not going to assist the jury at all."

The Court concluded by saying, at page 372, line 10,

The Court: " I am just saying what kind of evidence is going to assist the jury. That's what I have to consider under Evidence Code Section 800. And this will not assist the jury in any material way sufficient to warrant his testimony. He will not testify.

Mr. Matley's testimony was crucial to the defense. The prosecution elicited testimony from the alleged victim, Susan Hamlin, that she wrote diary notes and letters under duress. Ms. Hamlin claimed that the diary notes and letters were written as Mr. Hamlin either beat her, threatened to beat her or held a gun to her head.

Ms. Hamlin therefore was able to claim that the writings were not true and a product of the duress she was under. Ms. Hamlin went on to say that she was extremely frightened as she wrote these documents and that many of the writings were done as Mr. Hamlin dictated what she wrote.

The writings in question are extremely helpful to the defense and extremely hurtful to Susan Hamlin and the prosecution.

Susan Hamlin initially went to the El Dorado County Sheriff's Office and reported that she had been raped as a child by her father, that her father continued to have incestuous sexual relations with her after she was married and throughout

her adult life, that she and her father molested the Hamlin children and that her father, Sidney Siemer, had her beaten severely in an attempt to stop her from going to the police.

After the Sheriff's Office did not immediately take action to arrest Dr. Siemer, two days later Susan Hamlin changed her story and then claimed that she had never been raped or molested by her father at any time and that she and her father never molested the Hamlin children. Ms. Hamlin now claimed that she was not beaten by an associate of her father but rather she was beaten by her husband, Mr. Hamlin. She went on to claim that Mr. Hamlin forced her to claim that her father had raped and molested her and others as some sort of extortion plot.

Ms. Hamlin's diaries are extremely important for both sides. The diaries clearly benefit the defense in that they give a detailed history by Ms. Hamlin of being raped and molested by her father, Sidney Siemer, throughout her life. Ms. Hamlin's diaries detail the incredible control her father had over her.

Simply put, Ms. Hamlin's diaries support across the board her initial statement to law enforcement and exonerate Mr. Hamlin of making up any of these claims as part of an extortion plot.

Ms. Hamlin's only way to avoid these damning documents was to claim that they were written under duress, threat and fear, and most importantly, that they were not true. The prosecution utilized Ms. Hamlin's denial to help make its case for torture by saying that these false documents were part of an extortion attempt and an element of torture.

Mr. Matley's testimony destroys a major portion of the prosecution case against Mr. Hamlin. His conclusions were that key documents that were submitted to him and authenticated as Ms. Hamlin's writing were NOT done under duress or a product of being dictated to.

Mr. Matley's testimony destroys Susan Hamlin's credibility and eliminates an element of torture that Mr. Hamlin's actions were done as part of an extortion plan.

Mr. Matley's testimony was the only evidence besides Mr. Hamlin's denials that supported the truth; that Ms. Hamlin's diaries were true and not written under duress, threat, or fear. Further, Mr. Matley's testimony refutes claims that Mr. Hamlin dictated these documents.

This was an absolutely crucial battleground for both sides. If the defense could convince the jury that Ms. Hamlin was lying about being forced to write her diaries and that the content of her diaries is true, then Ms. Hamlin's credibility is destroyed as to that claim and all others. However, if the prosecution could prove that Ms. Hamlin is telling the truth about writing these diaries under duress, beatings, and with a gun to her head, then Mr. Hamlin is portrayed in a manner that would make it much easier for the jury to convict him of multiple charges and most importantly it directly proves an element of torture which carries a life term.

Thus, this Court must acknowledge that Mr. Matley's testimony was extremely important to the defense. This is not a witness who was going to cover an insignificant area of this case. As such, the court cannot claim harmless error.

This Court must acknowledge that it excluded Mr. Matley on improper grounds. Evidence Code Section 800 deals only with non-expert witnesses, something this Court itself deemed that Mr. Matley was not. This Court recognized Mr. Matley as an expert on the record. At this point Evidence Code Section 800 becomes inapplicable and error for the Court to rely on in excluding Mr. Matley.

A new trial must be granted in light of this error.

B

THE COURT ERRED IN EXCLUDING TESTIMONY ABOUT SUSAN HAMLIN'S PRIOR CONVICTION FOR CHILD ENDANGERMENT

The prosecution presented testimony that Mr. Hamlin wanted his wife, Susan Hamlin, jailed wrongfully. The prosecution claimed that Susan Hamlin was forced by Mr. Hamlin to falsely confess to the molestation of the children. The prosecution argued that Mr. Hamlin did this as a means of punishment and control which is a typical characteristic of spousal abuse.

In that regard the prosecution offered expert testimony by Dr. Linda Barnard who testified that she had dealt with cases in which a husband forced a wife to falsely admit a crime. She went on to testify that such actions were characteristic of a spousal abuser. Detective Hoagland of the El Dorado County Sheriff's Office testified that Mr. Hamlin was upset that Ms. Hamlin was not arrested AFTER giving her confession. Susan Hamlin testified that Mr. Hamlin threatened her to force her "false confession" and that he wanted her jailed.

The defense offered prior conduct of Mr. Hamlin to refute these claims. Mr. Hamlin, who is a criminal defense attorney,

defended his wife, Susan Hamlin, when she was charged with a violation of Penal Code Section 273a(b), child endangerment, on March 9, 1999.

On that date, Sacramento Sheriff's Department Sergeant R. Calvin responded to a child endangerment call at Pier 1 Imports on Olsen Drive. Sgt. Calvin pulled in behind Susan Hamlin's Ford van. He peered into the side windows that were very darkened "smoked" glass. Sgt. Calvin saw two young children approximately 1 and 3 years of age. Sgt. Calvin tried the doors but they were locked.

Witnesses contacted by Sgt. Calvin and Deputy T. Taylor said that Susan Hamlin was in the store for 90 minutes and that the store made an announcement over the store public address system asking the parent of the two children in a brown van to come forward. Ms. Hamlin did not respond.

Sgt. Calvin was looking in the window of the van for approximately seven minutes and no one came forward.

Ms. Hamlin finally came out of the store and lied to the deputy, claiming she was only in the store for ten minutes and that she was watching the van constantly. When asked if she saw Sgt. Calvin trying the door or looking in on the children she said she did not see that. She claimed she did not hear an announcement. Ms. Hamlin claimed she could see the children but Sgt. Calvin stated,

> The van has very darkened smoked glass side windows. It is very doubtful Ms. Hamlin could see inside the van from inside the store due to outside reflections and the dark windows.

Susan Hamlin was charged and her husband, Mr. Hamlin, represented her. Mr. Hamlin appeared initially on April 9,

1999, and was informed that the initial offer from the prosecutor was for Ms. Hamlin to plead guilty to the offense and serve 90 days in jail.

Mr. Hamlin, through his negotiating efforts, was able to convince the District Attorney and Court to allow Ms. Hamlin to enter a diversion program, and that upon successful completion the matter would be dismissed.

On April 14, 1999, Mr. Hamlin appeared for his wife and entered a "Plea In Absentia" allowing Ms. Hamlin to avoid the stress and embarrassment of appearing in court. Her guilty plea was accepted and diversion granted.

Mr. Hamlin appeared again on August 5, 1999, to ensure the court was aware of Ms. Hamlin's successful completion and to record the dismissal of Ms. Hamlin's previous guilty plea.

Mr. Hamlin never made it known publicly that his wife had such a conviction until after his own arrest in this case. Mr. Hamlin did not tell detectives about Ms. Hamlin's prior conviction when they went to the Sheriff's Office and Susan Hamlin confessed to child molest. Mr. Hamlin successfully fought to keep his wife out of jail for her child endangerment conviction.

If as Dr. Barnard contends, a characteristic of a spousal abuser is to punish and control through having the wife wrongfully jailed, then why would Mr. Hamlin fight so hard to protect and defend her on a case that could have much more easily landed her in custody? Mr. Hamlin's actions seem quite opposite of what Dr. Barnard was describing. Mr. Hamlin kept his wife from having to publicly appear in court, never used her

conviction against her by revealing it to the public, friends or family. Most importantly, through his efforts he kept her from jail and negotiated an eventual dismissal of her conviction.

Mr. Hamlin's actions refute Dr. Barnard's testimony and the prosecution argument that he had this characteristic type of a spousal abuser. When given an opportunity to accomplish what a spousal abuser would want, Mr. Hamlin did not do so.

Additionally, Mr. Hamlin's conduct surrounding Ms. Hamlin's child endangerment arrest and conviction is consistent with the events surrounding Ms. Hamlin's confession to law enforcement on February 26, 2004.

When Mr. Hamlin's wife committed a crime in 1999 against their two youngest children, Mr. Hamlin tried to understand, help, and defend her. Ms. Hamlin's arrest is important in the time line of events. This began a very difficult time for Ms. Hamlin in which she began to deal with and reveal a lifetime of being raped and molested by her father.

When Ms. Hamlin confessed to molesting her children in February, 2004, she did so by explaining that she only committed the offenses under the duress of her father and because she was abused.

Mr. Hamlin was able to stand by his wife and defend her once again because he believed her inability to protect her children was a direct result of the abuse she suffered.

Admission of the events surrounding Ms. Hamlin's arrest and conviction for child endangerment would have shown Mr. Hamlin's consistent handling of his wife's problems. It corroborates Mr. Hamlin's testimony of how and why he supported Susan Hamlin and

refutes the prosecution theory that he had wrongful intentions when he went with his wife to the Sheriff's Office.

Separately, this offered testimony corroborates Susan Hamlin's confession. Ms. Hamlin confessed to allowing her father and participating with her father in the molest of her children. Susan Hamlin's subsequent recantation of her confession is weakened by the evidence that she has a prior history of abusing her children as seen in her 1999 arrest.

The prosecution was allowed to present Susan Hamlin as a victim that was beaten to confess falsely about molesting her children. The implication was that Ms. Hamlin's confession must be false because she would never hurt her children. Evidence of a prior child endangerment conviction rebuts that claim.

Separately, the offered testimony wold have explained in part why Ms. Hamlin recanted her February 26, 2004, confession. Mr. Hamlin gave an offer of proof to this Court that after Ms. Hamlin confessed on February 26, 2004, to the molestation of her children she began to panic about retaliation by her father and worry that law enforcement was going to punish her severely as she had a prior conviction for child endangerment.

Ms. Hamlin specifically stated her concern that the District Attorney would not work with her because they would find out about her prior conviction that she felt was very similar.

It is the defense position that Ms. Hamlin's fear of being punished more severely due to her prior conviction was one of the reasons she falsely accused Mr. Hamlin of beating her into her confession; to avoid criminal responsibility and as a means

to recant her confession.

Lastly, Ms. Hamlin's conviction for child endangerment was offered under People v. Wheeler (1992) 4 C4th 284, as impeachment. This Court ruled that child endangerment could not be used for impeachment due to its finding that Ms. Hamlin's conduct was "passive".

The defense believes that this Court erred in its finding that it was passive conduct. The defense has attached a copy of the police report of Ms. Hamlin's arrest.

The defense would direct this Court to Susan Hamlin's affirmative actions in this crime. Ms. Hamlin affirmatively drove to a place of business and made an affirmative decision to leave her two young daughters, ages 1 and 3, alone, strapped in their car seats, in a vehicle which had its windows rolled up and doors locked.

Ms. Hamlin affirmatively entered a store not to buy food or essential items, but rather a Pier 1 Imports to do personal shopping. Ms. Hamlin affirmatively stayed in the store one and one-half hours and did not respond to store employees and a deputy trying to open her vehicle where her children were. Ms. Hamlin did not respond to a public address system call for her to come to the front of the store. Instead, she affirmatively ignored the announcement.

Susan Hamlin affirmatively left her two youngest babies, ages 1 and 3, alone in a shut up vehicle for one and one-half hours without checking on them and in total disregard for their well being and safety.

Ms. Hamlin then affirmatively lied to the deputies claiming

she was only in the store for ten minutes and that she was watching he children from the store.

This event was not passive conduct and should have been admitted. Ms. Hamlin's credibility was the single most significant issue in the trial. A prior conviction to impeach her is significant and should have been allowed.

Overall, this offered testimony had four separate significant reason it should have been admitted. Failure to do so was error and should result in this Court granting a new trial.

III

THE TRIAL COURT MAY GRANT A MOTION FOR NEW TRIAL ON THE BASIS OF INSUFFICIENCY OF THE EVIDENCE TO SUSTAIN THE VERDICT

Penal Code Section provides in part:

> When a verdict has been rendered or a finding made against the defendant, the court may, upon his application, grant a new trial, in the following cases only:...
>
> 6. When the verdict or finding is contrary to law or evidence....

A

THE TRIAL COURT MUST INDEPENDENTLY REWEIGH THE EVIDENCE

In a jury trial the defendant is entitled to two decisions on the evidence: one by the jury and another by the judge ruling on a motion for a new trial. People v. Sarazzawski (1945) 27 C2d 7, 15-16. A trial court must review the evidence independently, considering the proper weight to be afforded to the evidence and then deciding whether there is sufficient credible evidence to support the verdict. People v. Davis (1995) 10 C4th 463, 524;

People v. Lewis (2001) 26 C4th 334, 364.

As the court in People v. Robarge (1953) 41 C2d 628, 634, explained, the judge is not bound by the jury's determination of the evidence, but instead weighs the evidence and exercises an independent judgment:

> While it is the exclusive province of the jury to find the facts, it is the duty of the trial court to see that this function is intelligently and justly performed, and in the exercise of it supervisory power of the verdict, the court, on motion for a new trial, should consider the probative force of the evidence and satisfy itself that the evidence as a whole is sufficient to sustain the verdict.

This authority of the court to reweigh the evidence has been repeatedly emphasized by our Supreme Court. People v. Davis, supra, and People v. Lewis, supra.

If the court entertains doubts concerning the credibility of a witness it is not bound by the contrary conclusion of the jury. The trial court must "...give defendant the benefit of its independent conclusion as to the sufficiency of credible evidence to support the verdict." People v. Robarge, supra, page 634.

This duty of the trial court was similarly explained in People v. Sarazzawski, supra, at pages 15-16:

> The defendant is entitled to two decisions on the evidence, one by the jury and another by the trial judge in passing upon a motion for a new trial. [*Citation.*] In giving consideration to the important matter of the sufficiency of the evidence to support the jury's verdict, the trial court, in ruling on a motion for a new trial, is not bound by conflicts in the evidence [*citation]*, and the duty is imposed upon it then to consider such additional and not unimportant features as the credibility of witnesses, their manner and appearance in testifying, and the proper weight to be accorded to the evidence.

The standard of review by a trial court acting under this section is different from the standard used by an appellate

court under the same section. In ruling upon a motion for a new trial, the trial court is required to independently weigh the evidence, but an appellate court will not modify or set aside the verdict if there is any substantial evidence to support it. (People v. Serrato (1973) 9 C3d 753, 761.

B

THERE WAS INSUFFICIENT EVIDENCE TO UPHOLD THE JURY'S VERDICT OF GUILTY AS TO COUNT I, PENAL CODE SECTION 206, TORTURE

The prosecution relied on the testimony of Susan Hamlin and, to a lesser extent, Ryan and Alec Hamlin to argue that Mr. Hamlin was guilty of the charged offenses. The prosecution presented evidence that the torture charge occurred over a period of time and was a course of conduct.

Consistent with that position, the prosecution presented a series of events in which the prosecution claimed Mr. Hamlin committed acts that constituted torture and separately constituted specific acts of criminal conduct.

The indictment presented to the jury had 18 felony counts, six of which included sentencing enhancements. The indictment presented as Count I Penal Code Section 206. That count covered June 1, 2003, through February 29, 2004. The remaining 17 counts were the specific acts within that time frame that constituted torture. The prosecution was consistent with each witness as to specific events and acts that were put forth to prove torture and the specific crime attached to that specific event.

The prosecution did not argue or present any significant

evidence that was separate and apart from the 17 counts of specific incidents to support its claim that torture had occurred.

Thus, in examining whether there is sufficient evidence to uphold the guilty verdict of torture, it is essential to examine the jury's other verdicts. More pointedly, the defense is asking this Court to examine whether there is sufficient evidence of "great bodily injury" as mandated in Penal Code Section 206, torture, in light of the jury's finding in its other verdicts.

The prosecution specifically asked the jury to decide if there was "great bodily injury" on two counts, Counts 9 and 17.

In Count 9, the prosecution charged Mr. Hamlin with violating Penal Code Section 273.5, spousal abuse, and added the enhancement of Penal Code Section 12022.7, alleging that Mr. Hamlin personally inflicted great bodily injury on Ms. Hamlin. The prosecution argued, and this Court so instructed the jury in answering Jury Question #9, that the "great bodily injury" was Susan Hamlin's broken ribs. The Court in its written response to Jury Question #9 stated that the act was the breaking of Ms. Hamlin's ribs which occurred on "Super Bowl Sunday", February 1, 2004. In fact, the Court wrote that this was "the rib breaking incident". The Court's reference was consistent with the manner in which the prosecution presented its evidence, breaking down the evidence into "incidents" or "events".

The jury found Mr. Hamlin guilty of the violation of Penal

Code Section 273.5, spousal abuse, but found that Mr. Hamlin did not personally inflict great bodily injury on Ms. Hamlin in violation of Penal Code Section 12022.7. Thus, one of the most significant of the prosecution's arguments, that Mr. Hamlin committed torture by inflicting great bodily injury by breaking Ms. Hamlin's ribs, was rejected by the jury. The prosecution argued that the broken ribs occurred on February 1, 2004. There was no evidence that the injury occurred at some other time and, in fact, the jury was instructed by the Court that the "rib breaking incident" occurred on "Super Bowl Sunday", February 1, 2004.

Therefore, in analyzing whether there was sufficient evidence of great bodily injury for torture, this Court cannot rely on the evidence of Ms. Hamlin's broken ribs.

In Count 17, the prosecution charged Mr. Hamlin with violating Penal Code Section 273.5, spousal abuse, and added the enhancement of Penal Code Section 12022.7(a), alleging that Mr. Hamlin personally inflicted great bodily injury on Ms. Hamlin. The prosecution argued and this Court so instructed the jury in answering Jury Question #9, that the "great bodily injury" was the breaking of Ms. Hamlin's nose during the "laundry room incident" on February 22, 2004.

The jury found Mr. Hamlin guilty of violating Penal Code Section 273.5, spousal abuse, but found that Mr. Hamlin did not personally inflict great bodily injury on Ms. Hamlin in violation of Penal Code Section 12022.7. Again, one of the prosecution's significant arguments that Mr. Hamlin committed torture by inflicting great bodily injury by breaking Ms.

Hamlin's nose was rejected by the jury. Once again, this injury was limited by the prosecution's argument, this Court's instruction, and the evidence to have occurred on February 22, 2004, in "the laundry room incident".

Therefore, in analyzing whether there was sufficient evidence of great bodily injury for torture, this Court cannot rely on the evidence of Ms. Hamlin's broken nose.

The prosecution presented evidence of other "incidents" from which the jury could have inferred great bodily injury for the torture count. However, the jury, upon hearing the prosecution's evidence, found Mr. Hamlin not guilty of those counts based on those other "incidents".

In Count 10, the prosecution charged Mr. Hamlin with violating Penal Code Section 245(a)(1), assault with a deadly weapon, a sword. The prosecution argued and this Court so instructed the jury that this count alleged that Mr. Hamlin used a sword to nearly cut off Ms. Hamlin's right ring finger. This offense allegedly occurred during the time period encompassed by the torture charge. Count 10 was alleged to have been committed from February 10 to February 11, 2004, according to this Court's instructions to the jury.

The jury found Mr. Hamlin not guilty as to County 10 and the alleged sword incident. Therefore, in analyzing whether there was sufficient evidence of great bodily injury for torture, this Court cannot rely on any evidence that Mr. Hamlin nearly cut off Ms. Hamlin's finger.

In Count 18, the prosecution charged Mr. Hamlin with violating Penal Code Section 245(a)(1), assault with a deadly

weapon. The prosecution argued and this Court so instructed the jury in response to Jury Questions #9 and #16 that Mr. Hamlin struck Ms. Hamlin with a "stick, board, and pipe in the garage prior to going into the laundry room on February 22, 2004". The prosecution further argued that bruises that were seen on Ms. Hamlin were a result of this alleged assault.

The jury found Mr. Hamlin not guilty as to Count 18. Therefore, in analyzing whether there was sufficient evidence of great bodily injury for torture, this Court cannot rely on the charge that Ms. Hamlin was struck by Mr. Hamlin with a stick, board, or pipe.

In Counts 7 and 8, Mr. Hamlin was charged with violating Penal Code Sections 273.5, spousal abuse, and 236, false imprisonment by use of force or violence. The prosecution argued and this Court so instructed the jury in response to Jury Question #9 that Mr. Hamlin allegedly committed these offenses in the master bedroom of the Hamlin home during the weekend of February 7, 2004, to February 9, 2004, while Mark Steenberg visited and stayed at the home. Ms. Hamlin testified that she was beaten so badly that she screamed out, "Help me, help me!" in an attempt to have Mr. Steenberg come to her aid. Ms. Hamlin further claimed that Mr. Hamlin held her and prevented her from leaving the bedroom as she attempted to flee to safety.

The jury found Mr. Hamlin not guilty as to both Counts 7 and 8. This was referred to as the Mark Steenberg incident. Therefore, in analyzing whether there was sufficient evidence of great bodily injury for torture, this Court cannot rely on

the allegation that Ms. Hamlin was beaten and unlawfully restrained during this "incident".

In Counts 11 and 12, Mr. Hamlin was charged with violating Penal Code Sections 422, making criminal threats, and 236, false imprisonment by use of force or violence. It was additionally alleged that in the commission of those two crimes Mr. Hamlin violated Penal Code Section 12022(a) by being armed with a firearm. The prosecution argued and this Court so instructed the jury in response to Jury Question #9 that Mr. Hamlin unlawfully restrained Ms. Hamlin by sleeping with her by his side while he held a gun. Further, Mr. Hamlin allegedly told Ms. Hamlin that if she moved he would shoot her. The prosecution and this Court stated that the two acts occurred in the Hamlin master bedroom between February 10, 2004, and February 11, 2004.

The jury found Mr. Hamlin not guilty as to both Counts 11 and 12. Therefore, in analyzing whether there was sufficient evidence of great bodily injury for torture, this Court cannot rely on the allegations of this incident.

In Counts 2, 3, and 4, Mr. Hamlin was charged with violating Penal Code Section 273a(a), child endangerment under circumstances likely to produce great bodily injury or death. The jury found Mr. Hamlin not guilty of Counts 2, 3, and 4, but did find Mr. Hamlin guilty of the lesser included offense of child endangerment under circumstances other than those likely to produce great bodily injury or death. Counts 2, 3, and 4 were felony charges. The jury's verdicts were as to misdemeanor charges. In finding Mr. Hamlin not guilty of

Counts 2, 3, and 4, the jury rejected the felony requirement that Mr. Hamlin did acts "likely to produce great bodily injury or death".

In Count 16, the prosecution charged Mr. Hamlin with violating Penal Code Section 246.3, discharge of a firearm in a grossly negligent manner. The prosecution argued and the law requires that the discharge was grossly negligent and done in such a way "which could result in injury or death to a person".

The jury found Mr. Hamlin not guilty of this charge as well.

The not guilty verdicts in Counts 2, 3, 4, and 16 do not include incidents that the defense believes the jury could have used to find "great bodily injury" to Ms. Hamlin for the torture charge. However, it is further evidence of the jury's findings that Mr. Hamlin did not do anything that constituted the infliction of great bodily injury or even attempt to inflict great bodily injury on Ms. Hamlin or anyone else.

In Count 5, the prosecution charged Mr. Hamlin with violating Penal Code Section 245(a)(1), assault by means of force likely to produce great bodily injury. The prosecution argued and this Court so instructed the jury in response to Jury Question #6 that the alleged assault took place in the office at the Hamlin home on September 17, 2003. Ms. Hamlin testified that Mr. Hamlin threw her headfirst into a file cabinet, leaving the cabinet dented. She further testified that Mr. Hamlin then threw her into shelves, cutting her back in three places, and that she was then beaten about the face

and head as she tried to call 911.

The jury deadlocked on this Count, unable to reach a decision. The prosecution moved for dismissal of this Count. This Court granted the motion and dismissed Count 5. Due to the jury's inability to find Mr. Hamlin guilty on this Count, this Court cannot rely on this incident or this evidence in making a determination about the sufficiency of the evidence concerning great bodily injury for torture.

In Counts 14 and 15, Mr. Hamlin was charged with violating Penal Code Sections 245(a)(1), assault with a deadly weapon, and 422, making criminal threats. The prosecution also charged Mr. Hamlin with violating Penal Code Section 12022.5(a), personally using a firearm in the commission of those two crimes. The jury deadlocked on both of those Counts, unable to reach decisions. The prosecution moved for dismissal of these two Counts. This Court granted that motion and dismissed Counts 14 and 15.

It is the defense's position that these two Counts would not have provided any evidence that Mr. Hamlin committed "great bodily injury" on Ms. Hamlin that could be considered for the torture charge in any regard. However, given the jury's inability to find Mr. Hamlin guilty as to either of these two Counts, it becomes a moot point. The deadlock and dismissal precludes this Court from considering the evidence or incidents in determining whether there was sufficient evidence of great bodily injury for torture.

Of the 17 felony Counts other than the torture charge, the jury found Mr. Hamlin guilty of two counts of spousal abuse

but found that he did not personally inflict great bodily injury as to those Counts. The jury also found Mr. Hamlin guilty of one other count of spousal abuse (Count 13) but the prosecution did not even allege infliction of great bodily injury as to that Count. The other guilty verdicts, three counts of misdemeanor child endangerment and one felony Count of making a criminal threat, do not involve evidence of Mr. Hamlin committing "great bodily injury" towards Ms. Hamlin, the named victim of the torture charge.

What this Court is left with is absolutely no evidence of Mr. Hamlin personally inflicting great bodily injury on Ms. Hamlin. In Counts 2 through 18, the jury made its findings very clear---Mr. Hamlin did not personally inflict great bodily injury on Ms. Hamlin.

This Court does not have any other evidence to rely on in supporting the jury's finding beyond a reasonable doubt that Mr. Hamlin personally inflicted great bodily injury for purposes of the torture charge. The prosecution followed the grand jury's lead in presenting this case. The grand jury charged Mr. Hamlin with committing torture, a violation of Penal Code Section 206, the most serious crime that covered an extended period of time. It then went about the task of charging Mr. Hamlin with the specifics of torture by alleging specific crimes where great bodily injury was either alleged or could be inferred. The remaining 17 Counts were alleged within the torture charge time frame. The prosecution in its presentation proceeded in the same manner.

The prosecution drew out evidence through its witnesses

about "events" or "incidents" that the prosecution argued constituted torture. Those events or incidents constituted the evidence for the 17 other charged offenses. The prosecution never argued nor did it present evidence that was separate and apart from the 17 other Counts that made a case for torture. This was not a case in which the prosecution argued the evidence that supported Counts 2 through 18 was different than what it was arguing for the torture charge.

There was no additional evidence that would support a finding that Mr. Hamlin committed great bodily injury in connection with the torture charge.

A review of the evidence reveals there were no other "events" or "incidents" that can be pointed to or that separately support the torture charge. The jury reviewed the events and incidents and found overwhelmingly that Mr. Hamlin did not inflict great bodily injury on Ms. Hamlin.

Dated: April 4, 2006.

Respectfully submitted,

ROBERT BANNING
Attorney for Defendant

(13)

People of the State of California,

Plaintiff(s),

Case No. P04CRF0132

vs.

Richard William Hamlin,

Defendant(s).

/

QUESTIONS BY THE JURY

QUESTION:

We disagree amongst ourselves what sort of injury constitutes a "great bodily injury". Other than there being "significant or substantial bodily injury or damage" is there any criteria that makes ~~the~~ an injury fall under great bodily injury? We are having trouble deciding on six counts because we don't agree.

Dated: 1/4/06
1334

Foreperson

ANSWER (IF ANY) BY COURT

This is a question of fact for you to decide after consideration of all the evidence, the jury instructions on the elements of the crimes charged, and the burden of proof. The words "significant or substantial" have no special legal definition other than the language you have been given; apply your common understanding to those terms.

Dated: 1/4/06
1415

Judge of the Superior Court

EXHIBIT 1

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great bodily injury Search Advanced Search Preferences

Web Results **1 - 10** of about **3,080,000** for **great bodily injury** [definition]. (**0.45** seconds)

Three Strikes - Violent and Serious Felonies
Any felony resulting in **great bodily injury** or in which a firearm was used. ... Arson that causes **great bodily injury**. Penetration by a foreign object. ...
www.threestrikes.org/tscrimes.html - 7k - Cached - Similar pages

Three Strikes - News Articles
If the proposed initiative were to pass and Keenan's **great bodily injury** conviction were erased, he could be freed after serving half his sentence, ...
www.threestrikes.org/latimes_9.html - 14k - Cached - Similar pages

Elder Abuse Statutes (Criminal) - Bureau of Medi-Cal Fraud & Elder ...
If victim suffers **great bodily injury** - then additional state prison: ... Will result in death or **great bodily injury** to another ...
ag.ca.gov/bmfea/laws/crim_elder.htm - 18k - Cached - Similar pages

[PDF] CALIFORNIA STATE LAW CORRELATION:
File Format: PDF/Adobe Acrobat - View as HTML
GREAT BODILY INJURY. §245.5 ASSAULTS WITH DEADLY WEAPONS ON SCHOOL EMPLOYEES ... proximately causes **great bodily injury** or death to himself, herself, ...
www.ucop.edu/ucophome/policies/clery/corrtable.pdf - Similar pages

[PDF] in the Courts
File Format: PDF/Adobe Acrobat - View as HTML
count vehicular homicide, 1 count **great bodily injury**, reck- ... two counts of **great bodily injury**, aggravated DWI, reckless. driving and open container. ...
www.dwiresourcecenter.org/downloads/ pdf/dwicourts/DWICtDec01-Jan02.pdf - Similar pages

RCW 9A.04.110 Definitions. In this title unless a different ...
(c) "**Great bodily** harm" means **bodily injury** which creates a probability of death, or which causes significant serious permanent disfigurement, ...
www.mrsc.org/mc/rcw/RCW%20%20%209A%20TITLE/ RCW%20%20%209A.%2004%20%20CHAPTER/RCW%20%20%209A.%2004%20.110.htm - 10k - Cached - Similar pages

AB 1789 (Cohn): Sentencing enhancement: **great bodily injury** ...
AB 1789. AB 1789 (Cohn) Sentencing enhancement: **great bodily injury**: paralysis or brain **injury**. Bill Text:; AB 1789 (Tabbed view of all versions) (beta) ...
www.aroundthecapitol.com/Bills/AB_1789 - 11k - Cached - Similar pages

SB 1021 (Bowen): Infractions: **bodily injury** or **great bodily injury**.
SB 1021. SB 1021 (Bowen) Infractions: **bodily injury** or **great bodily injury**. Bill Text:; SB 1021 (Tabbed view of all versions) (beta); Introduced: 02/22/05 ...
www.aroundthecapitol.com/Bills/SB_1021/ - 13k - Cached - Similar pages

Judicial Education Center
5.2.1 Vehicular Homicide and **Great Bodily Injury** by Vehicle ... According to §30-1-12(A), "**great bodily** harm" means an **injury** to a person that: ...
jec.unm.edu/resources/benchbooks/dwi/ch_5.htm - 54k - Cached - Similar pages

EXHIBIT 2

Keep Three Strikes!
Felonies in which **great bodily injury** is inflicted, including drunk driving (unless the defendant specifically intends to and personally inflicts **great** ...
www.keep3strikes.org/facts.asp - 27k - Cached - Similar pages

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Web

Results **11 - 20** of about **3,080,000** for **great bodily injury**. (**0.12** seconds)

Criminal Appeal: **Great bodily injury**
Posted by Jonathan Soglin at 06:42 AM in Blakely/Apprendi, **Great bodily injury**, Right to a Jury Trial | Permalink | Comments (0) | TrackBack ...
www.crimblawg.com/**great_bodily_injury**/index.html - 35k - Cached - Similar pages

Cochran Firm Criminal Defense Section. Assault and Battery ...
Committing an assault with a deadly weapon, defined as an instrument "likely to produce death or **great bodily injury**", results in felony assault. Cal. Pen. ...
www.criminalattorney.com/ pages/firm_articles_assault.htm - 28k - Cached - Similar pages

Families to Amend California's 3-Strikes: The 3-Strikes Law--Penal ...
(4) Sodomy by force, violence, duress, menace, threat of **great bodily injury**, or fear of immediate and unlawful **bodily injury** on the victim or another ...
www.facts1.com/general/3-1192.htm - 5k - Cached - Similar pages

1192
(5) oral copulation by force, violence, duress, menace, threat of **great bodily injury**, or fear of immediate and unlawful **bodily injury** on the victim or ...
www.facts1.com/general/1192-p21.htm - 8k - Cached - Similar pages

OSCN Found Document:Aggravated, **Great Bodily Injury** Inflicted ...
Oklahoma Jury Instructions- Criminal Chapter 4 A. ASSAULT AND BATTERY Section OUJI-CR 4-23 - Aggravated, **Great Bodily Injury** Inflicted - Elements ...
www.oscn.net/applications/ oscn/deliverdocument.asp?citeID=81077 - 10k - Cached - Similar pages

California Criminal Lawyer - California Penal Code Section 12022.7
(a) Any person who personally inflicts **great bodily injury** on any person other ... (f) As used in this section, "**great bodily injury**" means a significant or ...
law.onecle.com/california/penal/12022.7.html - 11k - Cached - Similar pages

2005-2006 Bill 4301 Text of Previous Version (Nov. 16, 2005) - www ...
(2) '**Great bodily injury**' means **bodily injury** which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss ...
www.scstatehouse.net/sess116_ 2005-2006/prever/4301_20051116.htm - 10k - Cached - Similar pages

[DOC] A
File Format: Microsoft Word - View as HTML
(2) '**Great bodily injury**' means **bodily injury** which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss ...
www.scstatehouse.net/sess116_2005-2006/bills/4301.doc - Similar pages

http
The jury found Hamlin NOT GUILTY of **great bodily injury**. This fine distinction between the definitions of "corporal **injury**" and "**great bodily injury**" ...
www.newsmakingnews.com/vm,hamlin,verdict,1,12,06.htm - 20k - Cached - Similar pages

[PDF] * This disposition is not appropriate for publication and may not ...

File Format: PDF/Adobe Acrobat - View as HTML
firearm, or by any means likely to produce **great bodily injury**, ... **great bodily injury** upon the person of a peace officer or firefighter, ...
www.ca9.uscourts.gov/coa/memdispo.nsf/ pdfview/102705/$File/04-10291.PDF - Similar pages

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great bodily injury Search

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Web Results

Page 1 of 397,700 results containing **great bodily injury** (0.38 seconds)

Criminal Appeal: **Great bodily injury**

... enhancement allegations, on the basis that the finding at issue in this case was a fact (GBI) about the
06:42 AM in Blakely/Apprendi , **Great bodily injury** , ...
www.crimblawg.com/great_bodily_injury/index.html Cached page

Three Strikes - Violent and Serious Felonies

... duress, menace or fear of immediate **bodily injury** on the victim or another person. Lewd act on a chil
sentence. Any felony resulting in **great bodily injury** or in ...
www.threestrikes.org/tscrimes.html Cached page 3/22/2006

V.C. Section 23104 - Reckless Driving: **Bodily Injury**

b) Any person convicted of reckless driving which proximately causes **great bodily injury**, as defined in
www.dmv.ca.gov/pubs/vctop/d11/vc23104.htm Cached page

Property_damages_**Bodily Injury**

... course is to give the student a broad understanding of damages and it differs in in language between **b**
opposed to advertisement **injury** This is a **great** ...
www.insuranceclaimsconsult.com/property_damages_bodily_injury.htm Cached page 3/21/2006

The California Criminal Law Observer: The Three "Strikes and You're ...

Murder or voluntary manslaughter; mayhem; rape; sodomy by force, violence, duress, menace, threat of
unlawful **bodily injury** on the victim or anotherperson; ...
www.silicon-valley.com/star4.html Cached page

Bodily Injury Cases - James and Dreyer Law

Typical cases include **injury** or death due to: Automobile Collisions Nursing Home Neglect/Abuse ... I kn
you have had **great** successes
www.charliejames.com/bodily.html Cached page

Ventura County Criminal Defense Attorneys, The Law Offices of Monique ...

P.L.: Felony battery with serious **bodily injury**. Felony Assault with a deadly weapon. **Great bodily injur**
charges and allegations
www.hilldefense.com Cached page

Penal Code

ASSAULT WITH DEADLY WEAPON OR FORCE LIKELY TO PRODUCE **GREAT BODILY INJURY** $ 1
30,000 245(a)3 ASSAULT WITH A MACHINEGUN
www.saccourt.com/criminal/bailsch/felonybail/penalCode.asp Cached page

A.R.M. of NY ~ Quote - Motorcycle Insurance

888.ARMofNY (276-6369) - BEST PRICES! - BEST CARRIERS! - **GREAT** SERVICE! - PAYMENT PLA
Pays when an insured person is legally liable for **bodily injury** or ...
www.homenet.com/quoteMotorcycle.html Cached page

OCCA: OUJI-CR 4-23

GREAT BODILY INJURY INFLICTED - ELEMENTS No person may be convicted of aggravated assault

Web Desktop News Images Local (BETA) Encarta

great bodily injury Search

+Search Builder Settings Help Español

Web Results

Page 3 of 397,700 results containing **great bodily injury** (0.30 seconds)

Bodily Injury Cases Parole Lawyer - www.lawyertexasparole.com
Attorney represents Texas Bodily Injury cases for parole. Web site contains lawyer fee, service and prisoner parole advice.

Semenax Volume Enhancer

CBS 5 - San Francisco,CA,USA ... Lamiero said Araujo was born a male but had "a deep heartfelt conviction ... to charges of elder neglect with a **great bodily injury** enhancement , and financial elder
semenaxpills.blogspot.com Cached page

Deposition and Trial Forms: Bodily Injury Legal forms for Attorneys

Deposition and Trial Forms: **Bodily Injury** Legal forms for Attorneys. ... Give your client **great** advice by means of our Client Handout for IME. A plaintiff's ...
www.lawyertrialforms.com/BI_Suite.htm Cached page 3/21/2006

Use-of-Force Definitions

Great bodily harm' means **bodily injury** which creates a high probability of death, or which causes serio permanent disfigurement, or which causes a permanent or ...
www.laaw.com/uofdef.htm Cached page 3/23/2006

Serious Felonies That Count as Strikes Under California Three Strikes ...

Murder or voluntary manslaughter. Mayhem. Rape. Sodomy by force, violence, duress, menace, threat o **great bodily injury**, or fear of immediate and unlawful **bodily injury** on the ...
shouselaw.com/serious-felonies.html Cached page

INSURANCE SERVICES OFFICE ACQUIRES MARINE DATABASE FIRM TO HELP ..

... SERVICES OFFICE ACQUIRES MARINE DATABASE FIRM TO HELP EMPLOYERS AND INSURER MANAGE **BODILY INJURY** CLAIMS ... international ocean transportation, coastal transportation, coastal towing, inland towing, **Great** ...
stg.iso.com/press_releases/2001/01_16_01.html Cached page

1997-98 Bill 3148: Child, unlawful to inflict bodily harm upon; crimes ...

1) inflict **great bodily injury** upon a child; or (2) knowingly allow a person who with knowledge and malic inflicts **great bodily injury** upon a child. (B) A person who violates
www.scstatehouse.net/sess112_1997-1998/bills/3148.htm Cached page

Memo on Torture Draws Focus to Bush (washingtonpost.com)

... be equivalent in intensity to the pain accompanying serious physical **injury**, such as organ failure, impairment of **bodily** ... Cool Gadgets, **Great** Deals, Visit CircuitCity.com Earn a free trip on Acela ...
www.washingtonpost.com/wp-dyn/articles/A26401-2004Jun8.html Cached page 3/21/2006

California DUI Accident Defense Lawyers - Los Angeles Drunk Driving ...

Worse still, if any of the injured parties is seriously hurt, the DUI defendant may be charged with a "**great bodily injury**" enhancement
www.southern-california-dui-defense.com/duis_causing_injury.html Cached page

Web Desktop News Images Local (BETA) Encarta
great bodily injury Search
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Page 2 of 397,700 results containing **great bodily injury** (0.30 seconds)

Bodily Injury Cases Parole Lawyer - www.lawyertexasparole.com
Attorney represents Texas Bodily Injury cases for parole. Web site contains lawyer fee, service and prisoner parole advice.

RAPE AND ASSAULT WITH INTENT TO INFLICT **GREAT BODILY INJURY** | William .

RAPE AND ASSAULT WITH INTENT TO INFLICT **GREAT BODILY INJURY** In this particular rape case, defendant was accused by his former girlfriend of holding her down and beating her severely while ...
www.nimmolawgroup.com/results/assault.html Cached page

Recent Cases

Assault With **Great Bodily Injury** - No **Great Bodily Injury** Found By Jury, "Strike" Avoided
www.adamlawyer.com/Recent_Cases.htm Cached page 3/21/2006

Lafayette Louisiana Personal **Injury** Attorneys Accident Lawyers - Glenn ...

T he Glenn Armentor Law Corporation is a highly specialized law firm with **great** experience in all areas c **bodily injury** litigation, arbitration and mediation for the ...
www.glennarmentor.com Cached page

Three Strikes - News Articles

Richard Keenan pleaded guilty in 2000 to two counts of gross vehicular manslaughter for the deaths of Runyon and Czuprynski, and a separate count of causing **great bodily injury** to a third passenger
www.threestrikes.org/latimes_9.html Cached page 3/21/2006

Keep Three Strikes!

Felonies in which **great bodily injury** is inflicted, including drunk driving (unless the defendant specificall intends to and personally inflicts **great bodily injury**
www.keep3strikes.org/facts.asp Cached page

California Criminal Defense Attorneys, The Law Offices of Monique ...

P.L.: Felony battery with serious **bodily injury**. Felony Assault with a deadly weapon. **Great bodily injur** allegations. Jury found not guilty on all charges and allegations
www.hilldefense.com/about.php4 Cached page

Deadly force - Wikipedia, the free encyclopedia

Deadly force or " shoot to kill " is that level of force which is inherently likely to cause death or **great bodi injury**. Firearms , bladed weapons and explosives are among those weapons the use of which is ...
en.wikipedia.org/wiki/Deadly_force Cached page

OCCA: OUJI-CR 6-30

Seventh, that resulted in **great bodily injury** to another person]. OR [Sixth, the driver endangered anothe person]. [**Great bodily injury** means **bodily injury** (that creates a substantial risk of death ...
www.okcca.net/online/oujis/oujisrvr.jsp?o=408 Cached page

Minnesota Statutes 2005, 609.02

Subd. 8. **Great bodily** harm. "**Great bodily** harm" means **bodily injury** which creates a high probability c

SACRAMENTO COUNTY SHERIFF'S DEPARTMENT

CRIME REPORT

DIST.	SECT.	SUB.		
5	B	16	☐ CUSTODY ☒ CITATION ☐ FURTHER INVEST	☐ PEND ☐ CLEARD ADULT ☐ CLEARED JUV.

REPORT NUMBER: 99-017553

LOCATION OF OCCURRENCE	REPORT DATE	DAY	TIME	EVENT NO.
10801 OLSON DRIVE, SAC CA	030999	TUE	1345	0572

OCC. DATE FROM	DAY	TIME	OCC. DATE TO	DAY	TIME	CONNECTED REPORT(S) - NUMBER AND TYPE
030999	TUE	1245	030999	TUE	1400	CITATION #539644

CODE SECTION	F	M	CRIME TITLE
PC. 273a(b)		✓	A CHILD ENDANGERMENT
			B
			C
			D

LOGGED
KPF ENTRY
MAR 2 9 1999
UCR

SPECIAL CRIME CATEGORIES EXIST? ☐ NO ☒ YES - CATEGORY FROM REVERSE A01

V-1	NAME (LAST, FIRST, MIDDLE)	RES. PHONE	BUS. PHONE
	HAMLIN, CLARE SIDNEY		

RESIDENCE ADDRESS	CITY	STATE	ZIP	BUSINESS ADDRESS (SCHOOL IF JUVENILE)	CITY	STATE	ZIP
3340 BEATTY DR, EL DORADO HILLS							

DOB	AGE	SEX	RACE	VICTIM'S VEHICLE (YR., MAKE, MODEL, LIC. NO.)
090595	3	F	W	

V-2	NAME (LAST, FIRST, MIDDLE)	RES. PHONE	BUS. PHONE
	HAMLIN, JENNIFER SUSAN		

RESIDENCE ADDRESS	CITY	STATE	ZIP	BUSINESS ADDRESS (SCHOOL IF JUVENILE)	CITY	STATE	ZIP
3340 BEATTY DR, EL DORADO HILLS							

DOB	AGE	SEX	RACE	VICTIM'S VEHICLE (YR., MAKE, MODEL, LIC. NO.)
111997	1	F	W	

X 3596611
X 3596613

A. PLACE OF CRIME: 1☐ STRUCTURE 2☒ VEHICLE 3☐ RES/YARD 4☐ STREET/ALLEY 5☐ LOT/PARK 6☐ BUS/STORAGE 7☐ OTHER

B. DESCRIPTION OF SURROUNDINGS: 1☐ RESIDENTIAL 2☒ BUSINESS 3☐ INDUSTRIAL 4☐ RECREATIONAL 5☐ INSTITUTIONAL 6☐ CONST. SITE 7☐ OPEN SPC 8☐ OTHER

TYPE OF STRUCTURE ☒ N/A

C. NON-RESIDENTIAL: ☐ 1 CONVENIENCE ☐ 2 FAST FOOD ☐ 3 RESTAURANT/BAR ☐ 4 DRUG/MEDICAL ☐ 5 GAS STATION ☐ 6 RETAIL ☐ 7 SCHOOL ☐ 8 FINANCIAL INST. ☐ 9 ENTERTAIN/REC. ☐ 10 PUBLIC BLDG. ☐ 11 OTHER

D. TARGET(S): ☐ 1 SHOP ☐ 2 CASH REG/DRAWER ☐ 3 OFFICE ☐ 4 SAFE/BOX ☐ 5 VENDING MACHINE ☐ 6 DISPLAY ITEMS ☐ 7 CLASSROOM ☐ 8 OTHER

E. RESIDENTIAL: ☐ 1 SINGLE FAMILY ☐ 2 APT/CONDO ☐ 3 DUPLEX/TOWN ☐ 4 MOTEL/HOTEL ☐ 5 MOBILE HOME ☐ 6 OTHER

F. TARGET(S): ☐ 1 STORAGE BLDG. ☐ 2 CLOSET ☐ 3 BATHROOM ☐ 4 DEN ☐ 5 FAMILY ROOM ☐ 6 GARAGE/CARPORT ☐ 7 KITCHEN ☐ 8 LIVING ROOM ☐ 9 STORAGE ROOM ☐ 10 BEDROOM ☐ 11 DINING ☐ 12 OTHER

G. POINT OF ENTRY: 1☒ N/A 2☐ FRONT 3☐ REAR 4☐ SIDE 5☐ GR. LEV. 6☐ UP. LEV.

H. ☐ 1 UNKNOWN ☐ 2 DOOR ☐ 3 WINDOW ☐ 4 SLIDING GLASS ☐ 5 DUCT/VENT ☐ 6 ADJ. BLDG. ☐ 7 ROOF/FLOOR ☐ 8 WALL ☐ 9 BASEMENT ☐ 10 OTHER

I. ALARM SYSTEMS: ☐ 1 YES ☐ 2 NO; SET OFF: ☐ 3 YES ☐ 4 NO

J. METHOD OF ENTRY: ☒ N/A ☐ 1 ATTEMPT ONLY ☐ 2 NO FORCE ☐ 3 KEY/SLIP ☐ 4 BODY/FORCE ☐ 5 SAW/DRILL ☐ 6 HID IN BLDG. ☐ 7 CHANNEL LOCK ☐ 8 PRY TOOL ☐ 9 LIFT-OUT ☐ 10 BRICK/ROCK ☐ 11 BOLT CUTTERS ☐ 12 WINDOW SMASH ☐ 13 TAPE/WIRE ☐ 14 DOOR PUNCH ☐ 15 DOOR KICK ☐ 16 OTHER

INVESTIGATIVE NOTATIONS

SUSPECT INFO PAGE (NUMBER SUSP 1)	☒ YES	☐ NO
PHYSICAL EVIDENCE GATHERED BY R/O	☐ YES	☒ NO
CSI REQUESTED	☐ YES	☒ NO
IDENTIFIABLE PROPERTY	☐ YES	☒ NO
ADDITIONAL VICTIMS/ WITNESSES	☒ YES	☐ NO
NEIGHBORHOOD CANV	☐ YES	☒ NO
PROPERTY LOSS	☐ YES	☒ NO
PROPERTY LIST ATTACHED	☐ YES	☒ NO
INVESTIGATIVE DIV. PERS. NOTIFIED		

K. SUSPECT'S ACTION ☐ N/A

☐ 1 ENTERED OCCUPIED BLDG. ☐ 2 ENTERED UNOCCUPIED BLD. ☐ 3 VACANT RES/BLDG. ☐ 4 VANDALIZED/RANSACKED ☐ 5 USED MATCHES/SMOKED AT SCENE ☐ 6 DISABLED ALARM ☐ 7 ATE/DRANK ON PREMISES ☐ 8 VEHICLES NEEDED FOR LOOT ☐ 9 USED VICTIM'S TOOLS ☐ 10 KNEW LOCATION OF HIDDEN CASH ☐ 11 SELECTIVE IN LOOT ☐ 12 USED LOOKOUT DRIVER ☐ 13 BOUND/GAGGED VICTIM ☐ 14 RIPPED/CUT CLOTHING ☐ 15 MOLESTED VICTIM ☐ 16 FORCED VICTIM TO MOVE ☐ 17 DISABLED PHONE/ELECTRIC ☐ 18 INJURED VICTIM ☐ 19 THREATENED VICTIM ☐ 20 MASTURBATED ☐ 21 DISROBED FULLY/PARTIALLY ☐ 22 FIRED WEAPON ☐ 23 SUSPECT ARMED ☒ 24 OTHER

L. PROPERTY TAKEN ☒ N/A

☐ 1 LARGE LOSS VALUE ☐ 2 TOOK CHECKS/CREDIT CARDS ☐ 3 CONSUMABLE GOOD ☐ 4 OFFICE EQUIPMENT ☐ 5 CAMERA ☐ 6 POWER TOOLS/LAWN EQUIP. ☐ 7 FIREARMS ☐ 8 SILVERWARE ☐ 9 FINE JEWELRY ☐ 10 MONEY ☐ 21 OTHER ☐ 11 LARGE APPLIANCES ☐ 12 SMALL APPLIANCES ☐ 13 CLOTHING/FURS ☐ 14 DRUGS ☐ 15 CONSTRUCTION MATERIALS ☐ 16 AUTO PARTS/ACCESSORIES ☐ 17 TOOLS/CARP./MECH./ELECT ☐ 18 GOLD/SILVER COINS ☐ 19 TV/STEREO/VIDEO ☐ 20 NO LOSS

SYNOPSIS OF CRIME: KNOWN SUSPECT IS THE MOTHER OF (V-1) AND (V-2). (S-1) LEFT (V-1) AND (V-2) INSIDE OF A PARKED AND LOCKED VEHICLE FOR APPROXIMATELY 1-1/2 HOURS. THE WINDOWS OF THE VEHICLE WERE LOCKED AND SECURE.

99 MAR 12 AM 12:00

INVESTIGATING OFFICER	BADGE	DIVISION	SUPERVISOR	PAGE	OF
T. TAYLOR	89	S.PAT	[signature]	1	11

7400-055 (rev 6/88 - 7401-012)

EXHIBIT 3

SACRAMENTO COUNTY SHERIFF'S DEPARTMENT

99-17553
REPORT NUMBER

ADDITIONAL CRIMES/PERSONS REPORT

VICTIM (LIST FIRST VICTIM IF MORE THAN ONE): HAMLIN, CLARE SIDNEY

SECTION	F	M	CRIME TITLE
			E
			F
			G
			H
			I
			J

X252782

ADDITIONAL VICTIMS/WITNESSES/REPORTING PERSONS

VWR	NAME (LAST, FIRST, MIDDLE)	RES. PHONE	BUS. PHONE	RESIDENCE ADDRESS / CITY / STATE / ZIP	BUSINESS ADDRESS (SCHOOL IF JUVENILE) CITY / STATE / ZIP	DOB	AGE	SEX	RACE
R-1	CAMACHO, LAURA ANN	—	635-9735	—	10801 OLSON DR., SAC. CA	03-17-72	26	F	W
W-1	BEAL, STACI MARIE	—	635-9735	—	10801 OLSON DR., SAC CA	051578	20	F	W
W-2	BAUMAN, ALLEN VINCENT	427-8440	635-9735	6292 GOODVIEW WY, SAC CA	10801 OLSON DR., SAC. CA	7-17-72	26	M	W
W-3	FOX, SUNSHINE CANDICE	—	635-9735	—	10801 OLSON DR., SAC CA	021176	23	F	W

ADDITIONAL VICTIM/SUSPECT VEHICLES

	LICENSE NUMBER	STATE	YEAR	MAKE	MODEL/CC	COLORS - TOP/BOTTOM

CHARACTERISTICS: (1) DAMAGE (BODY, WINDOWS, INTERIOR, REPAIRS) (2) WHEELS (MAG, CHROME, OVERSIZE) (3) INTERIOR DESCRIPTION:

R/O NAME (LAST, FIRST, MIDDLE) / RES. PHONE / BUS. PHONE / RESIDENCE ADDRESS / CITY / STATE / ZIP / BUSINESS ADDRESS / CITY / STATE / ZIP

	LICENSE NUMBER	STATE	YEAR	MAKE	MODEL/CC	COLORS - TOP/BOTTOM

CHARACTERISTICS: (1) DAMAGE (BODY, WINDOWS, INTERIOR, REPAIRS) (2) WHEELS (MAG, CHROME, OVERSIZE) (3) INTERIOR DESCRIPTION:

R/O NAME (LAST, FIRST, MIDDLE) / RES. PHONE / BUS. PHONE / RESIDENCE ADDRESS / CITY / STATE / ZIP / BUSINESS ADDRESS / CITY / STATE / ZIP

INVESTIGATING OFFICER	BADGE	DIVISION	SUPERVISOR	PAGE
T. Taylor	801	SAST	[signature]	2 OF 11

7400-086 (REV 1/87) (7401-050)

SACRAMENTO COUNTY SHERIFF'S DEPARTMENT

SUSPECT INFORMATION REPORT

DATE 030999
CRIME A PC 273a(b)

99-17553
REPORT NUMBER

X 1366524

V-1 NAME (LAST, FIRST, MIDDLE) HAMLIN, CLARE SLONEY — RES. PHONE — BUS. PHONE

SUSP. A 1 ☒ ADULT ☐ JUV. NAME (LAST, FIRST, MIDDLE) HAMLIN, SUSAN RAE — BUSINESS ADDRESS (SCHOOL IF JUVENILE) — CITY — STATE — ZIP

RESIDENCE ADDRESS 3340 BEATTY DR., EL DORADO HILLS — CITY — STATE — ZIP

DOB	AGE	SEX	RACE	HGT	WGT	HAIR	EYES	OTHER ID (SSD / VLN / CII / FBI / DLN / SSN)	A	B	C	D	E	F	G	H	I	J
11-09-56	42	F	W	5'9	125	BRN	BLU	N:2590993										

ARRESTED ☐ YES ☐ NO — CITATION ☒ YES — CITATION NO. 539644 — NICKNAME/AKA — CJIS X-REF — M RELATIONSHIP TO VICTIM: MOTHER

SUSP. B ☐ ADULT ☐ JUV. NAME (LAST, FIRST, MIDDLE) — RES. PHONE — BUS. PHONE

RESIDENCE ADDRESS — CITY — STATE — ZIP — BUSINESS ADDRESS (SCHOOL IF JUVENILE) — CITY — STATE — ZIP

DOB	AGE	SEX	RACE	HGT	WGT	HAIR	EYES	OTHER ID (SSD / VLN / CII / FBI / DLN / SSN)	A	B	C	D	E	F	G	H	I	J

ARRESTED ☐ YES ☐ NO — CITATION ☐ YES — CITATION NO. — NICKNAME/AKA — CJIS X-REF — M RELATIONSHIP TO VICTIM

N HAIR LENGTH

SUSPECT A		SUSPECT B	
1 ☐	12 ☐	UNKN
2 ☐	13 ☐	BALD
3 ☐	14 ☐	COLLAR
4 ☒	15 ☐	SHOULDER
5 ☐	16 ☐	SHORT
6 ☐	17 ☐	RECEDING

HAIR TYPE

7 ☐	18 ☐	COARSE
8 ☒	19 ☐	FINE
9 ☐	20 ☐	THICK
10 ☐	21 ☐	WIRY
11 ☐	22 ☐	OTHER

O HAIR STYLE

SUSPECT A		SUSPECT B	
1 ☐	14 ☐	UNKN
2 ☐	15 ☐	AFRO/NAT
3 ☐	16 ☐	BRAIDED
4 ☐	17 ☐	BUSHY
5 ☐	18 ☐	GREASY
6 ☐	19 ☐	MILITARY
7 ☐	20 ☐	PONYTAIL
8 ☐	21 ☐	PROCESSED
9 ☒	22 ☐	STRAIGHT
10 ☐	23 ☐	WAVY/CURLY
11 ☐	24 ☐	WIG
12 ☐	25 ☐	CREWCUT
13 ☐	26 ☐	OTHER

P FACIAL HAIR

SUSPECT A		SUSPECT B	
1 ☐	12 ☐	UNKN
2 ☐	13 ☐	CLEAN SHAV
3 ☐	14 ☐	FULL BEARD
4 ☐	15 ☐	FU MANCHU
5 ☐	16 ☐	MUSTACHE
6 ☐	17 ☐	GOATEE
7 ☐	18 ☐	LOWER LIP
8 ☐	19 ☐	FUZZ/UNSHV
9 ☐	20 ☐	SIDEBURNS
10 ☒	21 ☐	NONE
11 ☐	22 ☐	OTHER

Q COMPLEXION

SUSPECT A		SUSPECT B	
1 ☐	12 ☐	UNKN
2 ☐	13 ☐	ACNE
3 ☐	14 ☐	DARK
4 ☐	15 ☐	FRECKLED
5 ☒	16 ☐	LIGHT
6 ☐	17 ☐	MEDIUM
7 ☐	18 ☐	PALE
8 ☐	19 ☐	POCKED
9 ☐	20 ☐	RUDDY
10 ☐	21 ☐	TANNED
11 ☐	22 ☐	OTHER

R GENERAL APPEAR.

SUSPECT A		SUSPECT B	
1 ☐	11 ☐	UNKN
2 ☒	12 ☐	CONSERVATIVE
3 ☐	13 ☐	DIRTY
4 ☐	14 ☐	DISGUISE
5 ☐	15 ☐	FLASHY
6 ☐	16 ☐	GOOD LOOKING
7 ☐	17 ☐	MILITARY
8 ☐	18 ☐	UNKEMPT
9 ☒	19 ☐	WELL GROOMED
10 ☐	20 ☐	OTHER

S DEMEANOR

SUSPECT A		SUSPECT B	
1 ☐	13 ☐	UNKN
2 ☐	14 ☐	ANGRY
3 ☐	15 ☐	APOLOGETIC
4 ☒	16 ☐	CALM
5 ☐	17 ☐	DISORGANIZED
6 ☐	18 ☐	IRRATIONAL
7 ☐	19 ☐	NERVOUS
8 ☐	20 ☐	POLITE
9 ☐	21 ☐	PROFESSIONAL
10 ☐	22 ☐	STUPOR
11 ☐	23 ☐	VIOLENT
12 ☐	24 ☐	OTHER

T SPEECH

SUSPECT A		SUSPECT B	
1 ☐	18 ☐	UNKN
2 ☐	19 ☐	ACCENT
3 ☐	20 ☐	LISP
4 ☐	21 ☐	STUTTER
5 ☐	22 ☐	RASPY
6 ☐	23 ☐	DISGUISED
7 ☐	24 ☐	RAPID
8 ☐	25 ☐	SLOW
9 ☐	26 ☐	NASAL
10 ☐	27 ☐	SOFT
11 ☐	28 ☐	LOUD
12 ☐	29 ☐	TALKATIVE
13 ☐	30 ☐	HIGH PITCH
14 ☐	31 ☐	LOW PITCH
15 ☒	32 ☐	PLEASANT
16 ☐	33 ☐	MONOTONE
17 ☐	34 ☐	OTHER

U SUSPECT WORE (DESCRIPTION)

A		B	
1 STOCKING MASK		11	
2 SKI MASK		12	
3 CAP/HAT		13	
4 COAT/JACKET		14	
5 SHIRT	BRN	15	
6 ~~PANTS~~	BRN SKIRT	16	
7 SHOES	BRN	17	
8 GLASSES	SUNGLASSES/BRN	18	
9 GLOVES		19	
10 OTHER	BRN STOCKINGS	20	

V SUSPECT TATTOOS SCARS (DESCRIPTION)

SUSPECT TATTOO A		B	SUSPECT SCARS A		B
1 ☒	15 ☐	UNKN	8 ☒	22 ☐	
2 ☐	16 ☐	EXTREMITY	9 ☐	23 ☐	
3 ☐	17 ☐	BODY	10 ☐	24 ☐	
4 ☐	18 ☐	FACE	11 ☐	25 ☐	
5 ☐	19 ☐	PICTURES	12 ☐	26 ☐	
6 ☐	20 ☐	NAME/INITIAL	13 ☐	27 ☐	
7 ☐	21 ☐	OTHER	14 ☐	28 ☐	

DESCRIBE

W SUSPECT WEAPON

☒ N/A

SUSPECT A		B	SUSPECT A		B
1 ☐	14 ☐	HANDGUN	8 ☐	21 ☐	BUTCHER KNIFE
2 ☐	15 ☐	SHOTGUN	8 ☐	22 ☐	OTHER CUT/STAB INST.
3 ☐	16 ☐	RIFLE	10 ☐	23 ☐	STRANGULATION
4 ☐	17 ☐	SIMULATED	11 ☐	24 ☐	HANDS-FEET
5 ☐	18 ☐	TOY GUN			BODY WEAPONS
6 ☐	19 ☐	OTHER/GUN UNK	12 ☐	25 ☐	BLACKJACK/CLUB
7 ☐	20 ☐	POCKET KNIFE			

SUSPECT A 13 ☐ B 28 ☐ OTHER EXPLAIN BELOW

X SUSPECT WEAPON FEATURES

A	B		A	B		A	B	
1 ☐	17 ☐	UNKN	7 ☐	23 ☐	LONG BARREL	13 ☐	29 ☐	BOLT ACTION
2 ☐	18 ☐	REVOLVER	8 ☐	24 ☐	WESTERN TYPE	14 ☐	30 ☐	SAWED-OFF
3 ☐	19 ☐	AUTOMATIC	9 ☐	25 ☐	SMALL BORE	15 ☐	31 ☐	PUMP
4 ☐	20 ☐	BLUE STEEL	10 ☐	26 ☐	LARGE BORE	16 ☐	32 ☐	ALTERED STOCK
5 ☐	21 ☐	CHROME/NICKEL	11 ☐	27 ☐	DOUBLE BARREL			
6 ☐	22 ☐	SHORT BARREL	12 ☐	28 ☐	SINGLE BARREL			

ADDITIONAL DESCRIPTION:

Y SUSPECT VEHICLE INFORMATION: 1 ☒ COLOR SOLID <= 2 ☐ TOP ____ 3 ☐ BOTTOM ____ Z ☐ SPECIAL FEATURES ____

PLACE LETTER/NUMBER CORRESPONDING TO COLOR AND/OR SPECIAL FEATURES IN APPROPRIATE SPACES ABOVE.

COLOR: A. BLACK; B. BLUE, TURQUOISE, AQUA; C. BROWN, BRONZE, COPPER; D. PURPLE; E. GREEN, LIME, OLIVE; F. GRAY, SILVER; G. RED, PINK, MAROON; H. TAN, BEIGE; I. WHITE, CREAM; J. YELLOW, ORANGE, RED; K. OTHER

SPECIAL FEATURES: 1 LEVEL ALTERED; 2 STICKER/DECAL ON BODY/BUMPER/WINDOW; 3 RUST OR PRIMER; 4 PAINTED LETTERS; 5 DECORATIVE PAINT; 6 DAMAGE TO FRONT; 7 DAMAGE TO REAR; 8 DAMAGE TO SIDE; 9 MISSING PARTS; 10 WINDOW BROKEN; 11 VINYL TOP; 12 SPEC. RIMS/TIRES; 13 LOUD MUFFLERS; 14 RATTY

15 OTHER DESCRIPTION: CONVERSION VAN FULL SIZED

LICENSE	STATE	YEAR	MAKE	MODEL	BODY STYLE
3445848		96	FORD	EXPLORER	VAN CONV.

DMV RETURN ON SUSPECT PLATE (VEH. DESC., P/O, ADDRESS)
96 FORD TO SUSAN HAMLIN @ 3340 BEATTY DR, EL DORADO HILLS 95762

SUSPECT KEY STATEMENT

INVESTIGATING OFFICER	BADGE	DIVISION	SUPERVISOR	PAGE
T. TAYLOR	804	S. PAST		3 OF 11

7400-056A (REV 9/88) [7401 FORM 012-1]

SACRAMENTO COUNTY SHERIFF'S DEPARTMENT

CONTINUATION REPORT

DIST	SECT	SUB
5		

99-17553
REPORT NUMBER

AUTHORITY	SECTION	FEL	MISD	INTERVIEW: MONTH	DAY	YEAR	TIME
PC	273a(b) PC		X				

COMPLAINANT/VICTIM (LIST FIRST VICTIM IF MORE THAN ONE)
HAMLIN, CLARE

PERSON INTERVIEWED (LAST FIRST MIDDLE)	V/R/W/S #	LOCATION OF INTERVIEW

TIME/DATE	REPORT INFORMATION IN THE CHRONOLOGICAL ORDER IT OCCURRED.

1350 hours 3.9.99 I copied an MCT broadcast of a possible 273 PC call at Pier 1 Imports on Olsen Drive. I was in the area and requested to be assigned to the call. I arrived within one minute.

As I drove into the parking lot, I was waved down by a female employee of Pier 1, later identified as Laura Camacho. She directed me to a bronze color Ford van, license CA 3UUS848, parked in front of the store. I parked directly in back of the van. I got out and observed two children in their car seats in the second row of the van. The children were 2 WFJ's who appeared to be approximately 1 year and 3 years of age.

Camacho briefly related that store personnel earlier made an announcement over the store public address system to determine if the parent(s) were inside the business. She said they asked over the PA if the parent(s) of two children in a brown Ford Van would please come to the front checkstands. There was no response and they telephoned the Sheriff's Department.

I ran a CLETS check on the registered owner of the van. I was at the scene for approximately 7 minutes with no one around coming to check on the welfare of the children. Deputy J. Collentine arrived and at the same time a WFA, later identified as Susan Hamlin, came out of the store and said she was the van owner and the children where her's. Hamlin said the children were asleep when she pulled into the parking spot and she did not wish to wake them up. I explained to her that a small child could quickly become ill and suffocate on their own expectorate if an adult was not around to assist.

Hamlin claimed she was only in the store for 10 minutes and was near the front windows all the time she was inside the store. She further claimed she did not have the van out of her sight during the time she was inside the store. I asked her if she saw me earlier looking into the van interior and trying the doors to see if they were locked or unlocked. She said she did not see me until she exited the store. The van has very darkened 'smoked' glass side windows. It is doubtful Hamlin could see inside the van from inside the store due to outside reflections and the dark windows. I could only see into the van interior by shading my eyes from and standing within several inches of the window.

Deputy T. Taylor arrived and contacted employees inside Pier 1. She related to me that employees told her that Hamlin had been in the store approximately 90 minutes prior to deputies arrival.

INVESTIGATING OFFICER(S)	BADGE	DIV.	APPROVING SUPERVISOR	PAGE
Sgt. R. Calvin	62	S. Patrol		4/11

7400-057b (7401-013-1)

SACRAMENTO COUNTY SHERIFF'S DEPARTMENT

CONTINUATION REPORT

5		
DIST	SECT	SUB

99-17553
REPORT NUMBER

AUTHORITY	SECTION	FEL	MISD	INTERVIEW: MONTH	DAY	YEAR	TIME
PC	273a(b) PC		X				

COMPLAINANT/VICTIM (LIST FIRST VICTIM IF MORE THAN ONE)
HAMLIN, CLARE

PERSON INTERVIEWED (LAST FIRST MIDDLE)	V/R/W/S #	LOCATION OF INTERVIEW

TIME/DATE	REPORT INFORMATION IN THE CHRONOLOGICAL ORDER IT OCCURRED.

The children appeared to clean, healthy and well taken care of. Due to the inconsistencies of Hamlin's version of the incident and that of store employees, and the fact that she could not see adequately into the interior of the van from inside the store, I determined she placed the children in a situation where their health or person could be endangered.

I recommended Hamlin be given a misdemeanor citation if she met proper criteria. Deputies Collentine and Taylor concurred. I left the scene and officers completed the call.

INVESTIGATING OFFICER(S)	BADGE	DIV.	APPROVING SUPERVISOR	PAGE
Sgt. R. Calvin	62	S. Patrol		5/11

7400-057b (7401-013-1)

SACRAMENTO COUNTY SHERIFF'S DEPARTMENT
CONTINUATION REPORT

A	B	C	D	E
F	G	H	I	J

99-17553
REPORT NUMBER

AUTHORITY	SECTION	FEL	MISD	INTERVIEW	MONTH	DAY	YEAR	TIME
PC 273a (b)			X					

COMPLAINANT/VICTIM (LIST FIRST VICTIM IF MORE THAN ONE)

PERSON INTERVIEWED (LAST, FIRST MIDDLE)	VRAWS #	LOCATION OF INTERVIEW

TIME/DATE REPORT INFORMATION IN CHRONOLOGICAL ORDER.

1346 HRS, 3-9-99, TUESDAY, I (J. COLLENTINE #83) WAS DISPATCHED TO 10801 OLSON DRIVE. THE CALL STATED THAT A CHILD HAD BEEN LOCKED IN A VAN AND THAT NO PARENT WAS AROUND AND THAT THE VAN WAS IN FRONT OF PIER 1 IMPORTS.

1354 HRS, I ARRIVED AFTER SGT. CALVIN #62. I WALKED OVER TO THE VAN AND SAW TO SMALL CHILDREN IN CAR SEATS IN THE BACK OF THE VAN. WHILE I WAS LOOKING INSIDE THE VAN THE CAR ALARM CHIRPED AND A FEMALE LATER IDENTIFIED AS SUSAN HAMLIN (S-1) ASKED IF THERE WAS SOMETHING WRONG BECAUSE IT WAS HER VAN.

I TOLD HAMLIN THAT THE SHERIFF'S DEPARTMENT HAD BEEN CALLED OUT BECAUSE SOME PEOPLE HAD SEEN THE KIDS IN THE VAN AND WERE CONCERNED BECAUSE THAT DID NOT SEE ANY ADULTS AROUND. HAMLIN SAID THAT SHE HAD GONE INTO PIER 1 TO SHOP AND HAD ONLY BEEN IN FOR A FEW MINUTES AND THAT SHE PARKED WHERE SHE COULD KEEP AN EYE ON THE VAN BECAUSE THE KIDS WERE ASLEEP WHEN SHE GOT THERE.

AFTER TALKING TO DEPUTY TAYLOR #801 AND SGT. CALVIN IT WAS DECIDED TO ISSUE HAMLIN A NOTICE TO APPEAR CITATION FOR CHILD ENDANGERMENT.

INVESTIGATING OFFICER	BADGE	DIV.	APPROVING SUPERVISOR	PAGE
J. COLLENTINE	83	SOUTH PATROL		6/11

Transcribed: 03/23/99 11:50am

SACRAMENTO COUNTY SHERIFF'S DEPARTMENT

CONTINUATION REPORT

DIST | SECT | SUB

99-17553
REPORT NUMBER

AUTHORITY	SECTION	FEL	MISD	INTERVIEW: MONTH	DAY	YEAR	TIME
PC	2732(b)		/	03	09	99	1345

COMPLAINANT/VICTIM (LIST FIRST VICTIM IF MORE THAN ONE)
HAMLIN, CLARE SIDNEY

PERSON INTERVIEWED (LAST FIRST MIDDLE)	V/R/W/S#	LOCATION OF INTERVIEW
CAMACHO, LAURA ANN	R-1	SCENE

TIME/DATE	REPORT INFORMATION IN THE CHRONOLOGICAL ORDER IT OCCURRED.
1345	HOURS / 030999 (TUE): I, DEPUTY T. TAYLOR #801,
	SPOKE TO LAURA ANN CAMACHO (R-1), WHO STATED THE
	FOLLOWING IN SUMMARY:
	I WAS WORKING INSIDE OF BER ONE IMPORTS AS A CASHIER
	TODAY. I TOOK A BREAK AND WHEN I RETURNED AT
	APPROXIMATELY 1215 HOURS, I WENT INTO THE BACK ROOM.
	I WAS ONLY THERE FOR A MINUTE WHEN ANOTHER
	CUSTOMER SERVICE REPRESENTATIVE, STACI BEAL CAME TO
	ME. SHE TOLD ME THAT A BROWN VAN WAS PARKED IN
	FRONT OF OUR STORE. SHE SAID THERE WERE TWO (2)
	BABIES LEFT UNATTENDED INSIDE OF THE LOCKED VAN AND
	THE WINDOWS WERE ALL ROLLED UP. STACI WAS VERY
	WORRIED AND WANTED TO CALL 9-1-1.
	I WENT OUTSIDE TO CHECK FOR MYSELF BEFORE CALLING
	THE POLICE.
	THE VAN WAS A FULL-SIZED FORD AND ALL THE WINDOWS
	AND DOORS WERE COMPLETELY CLOSED, ROLLED UP AND
	SECURE. TWO BABIES WERE BUCKLED INTO CAR SEATS
	IN TWO (2) REAR SEATS. THEY WERE AWAKE AND THEY
	WATCHED ME AS I WALKED AROUND THE VAN LOOKING
	IN ON THEM. THE SMALLEST OF THE BABIES WAS
	SEATED ON THE PASSENGER SIDE WITH A PACIFIER IN
	ITS MOUTH.

INVESTIGATING OFFICER(S)	BADGE	DIV.	APPROVING SUPERVISOR	PAGE	OF
T. TAYLOR	801	S. PAT		7	11

7400-057A

SACRAMENTO COUNTY SHERIFF'S DEPARTMENT

CONTINUATION REPORT

DIST | SECT | SUB

99-17553
REPORT NUMBER

AUTHORITY	SECTION	FEL	MISD	INTERVIEW: MONTH	DAY	YEAR	TIME
PC	273a(b)		/	03	09	99	1345

COMPLAINANT/VICTIM (LIST FIRST VICTIM IF MORE THAN ONE)
HAMLIN, CLARE SIDNEY

PERSON INTERVIEWED (LAST FIRST MIDDLE)	V/R/W/S#	LOCATION OF INTERVIEW
CAMACHO, LAURA ANN		

TIME/DATE	REPORT INFORMATION IN THE CHRONOLOGICAL ORDER IT OCCURRED.
1	I BECAME ANGRY THAT THEY WERE LEFT ALONE.
2	I WENT BACK INSIDE THE STORE AFTER WRITING
3	DOWN THE VANS LICENSE PLATE NUMBER AND I
4	USED THE P.A. SYSTEM TO PAGE THE OWNER OF
5	THE VAN.
6	
7	I ANNOUNCED FOR THE OWNER OF A BROWN FORD
8	VAN, LICENSE # 3LUE848 TO PLEASE COME TO
9	THE CASHIER. NOBODY ANSWERED OR RESPONDED
10	SO I CALLED 9-1-1.
11	
12	WHILE WE WAITED FOR THE SHERIFF'S TO ARRIVE,
13	FOUR OF US STOOD AT THE CASH REGISTER
14	WALKING BETWEEN THE REGISTER AND THE FRONT
15	DOOR TO WATCH OVER THE BABIES. WE WERE
16	OPENLY DISCUSSING AMONGST EACH OTHER AND A
17	CUSTOMER THE GALL IT TOOK FOR SOMEONE TO
18	LEAVE THEIR BABIES ALONE LIKE THAT.
19	
20	WHILE WE WERE ALL TALKING ABOUT IT, A SECOND
21	FEMALE CUSTOMER (LATER IDENTIFIED AS SUSAN
22	HAMLIN, S-1) STOOD AT THE REGISTER WITH US.
23	SHE NEVER SAID A WORD ABOUT THE BABIES.
24	
25	THE SHERIFF'S ARRIVED AND ABOUT TEN MINUTES
26	LATER THE FEMALE (SUSAN) EXITED THE STORE.
27	WE WERE ALL SURPRISED TO SEE HER GO TO
28	THE VAN. THOSE WERE HER BABIES AND SHE NEVER

INVESTIGATING OFFICER(S)	BADGE	DIV.	APPROVING SUPERVISOR	PAGE
T. TAYLOR	830	S.FOT		8 OF 11

7400-057A

SACRAMENTO COUNTY SHERIFF'S DEPARTMENT

CONTINUATION REPORT

DIST | SECT | SUB

99-17553
REPORT NUMBER

AUTHORITY	SECTION	FEL	MISD	INTERVIEW: MONTH	DAY	YEAR	TIME
PC	273.a(b)		/	03	09	99	1345

COMPLAINANT/VICTIM (LIST FIRST VICTIM IF MORE THAN ONE)
HAULIN, CLARE SIDNEY

PERSON INTERVIEWED (LAST FIRST MIDDLE)	V/R/W/S#	LOCATION OF INTERVIEW
CAMACHO, LAURA ANN	R-1	SCENE

TIME/DATE	REPORT INFORMATION IN THE CHRONOLOGICAL ORDER IT OCCURRED.
1	SAID A WORD TO ANYONE. I STILL HAVENT
2	SEEN HER OPEN A DOOR OR EVEN A WINDOW
3	TO CHECK ON THEM.
4	
5	
6	
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INVESTIGATING OFFICER(S)	BADGE	DIV.	APPROVING SUPERVISOR
T. TAYLOR	801	S.PST	

7400-057A

SACRAMENTO COUNTY SHERIFF'S DEPARTMENT

CONTINUATION REPORT

DIST | SECT | SUB

99-17553
REPORT NUMBER

AUTHORITY	SECTION	FEL	MISD	INTERVIEW: MONTH	DAY	YEAR	TIME
PC	273a(b)		✓	03	09	99	1420

COMPLAINANT/VICTIM (LIST FIRST VICTIM IF MORE THAN ONE)
HAMLIN, CLARE SIDNEY

PERSON INTERVIEWED (LAST FIRST MIDDLE)	VIR/WIS#	LOCATION OF INTERVIEW
BEAL, STACI MARIE	W-1	SCENE

TIME/DATE	REPORT INFORMATION IN THE CHRONOLOGICAL ORDER IT OCCURRED.

1420 HOURS/030999 (TUE): I, DEPUTY T. TAYLOR #801, SPOKE TO STACI MARIE BEAL (W-1), WHO STATED THE FOLLOWING IN SUMMARY:

AT APPROXIMATELY 1230 HOURS, I ASSISTED A CUSTOMER IN CARRYING OUT BAGS OF MERCHANDISE TO HER CAR. AS I WAS PLACING THE BAGS INTO THE VEHICLE, I SAW MOVEMENT COMING FROM INSIDE OF A BROWN FORD VAN. THE VAN WAS PARKED DIRECTLY BESIDE THE CAR I WAS AT AND WAS OUT OF VIEW FROM MOST OF THE INTERIOR OF THE STORE.

I LOOKED INTO THE VAN AND I SAW TWO BABIES BUCKLED INTO CARSEATS SITTING IN THE REAR OF THE VEHICLE. THE BABIES WERE ALL ALONE AND THE WINDOWS WERE ALL CLOSED UP AND COMPLETELY SECURE. THERE WAS NOBODY AROUND THE VAN OTHER THAN MYSELF.

IT BOTHERED ME THAT THE BABIES WERE LEFT UNATTENDED. YOU ALWAYS HEAR ABOUT KIDS DYING THAT WAY. I WENT INSIDE OF THE STORE AND TOLD LAURA CAMACHO WHAT I HAD FOUND. LAURA CALLED AUTHORITIES.

I KEPT AN EYE ON THE VAN AND BABIES. NOBODY EVER ATTENDED TO THEM UNTIL SHERIFF'S ARRIVED. THEY WERE LEFT ALONE FOR MORE THAN AN HOUR.

INVESTIGATING OFFICER(S)	BADGE	DIV.	APPROVING SUPERVISOR	PAGE
T. TAYLOR	801	SHBT		10 OF 11

7400-057A

SACRAMENTO COUNTY SHERIFF'S DEPARTMENT
CONTINUATION REPORT

A	B	C	D	E
F	G	H	I	J

99-17553
REPORT NUMBER

AUTHORITY	SECTION	FEL	MISD	INTERVIEW: MONTH	DAY	YEAR	TIME
PC 273a (b)			X				

COMPLAINANT/VICTIM (LIST FIRST VICTIM IF MORE THAN ONE)

PERSON INTERVIEWED (LAST, FIRST MIDDLE)	VRAWS #	LOCATION OF INTERVIEW

TIME/DATE REPORT INFORMATION IN CHRONOLOGICAL ORDER.

I WENT INTO PIER 1 AND CONTACTED ALLEN BAUMAN (W-3) AN EMPLOYEE ABOUT WHAT HE HAD SEEN AND HE RELATED THE FOLLOWING IN SUMMARY:

I GOT TO WORK AT 1:25 PM TODAY AND WENT UP TO THE REGISTER AT ABOUT 1:30 PM. A FEW MINUTES LATER THE LADY (S-1) YOU ARE TALKING ABOUT CAME UP WITH AN ITEM THAT SHE WANTED TO BUY. SHE ASKED IF SHE COULD LEAVE IT AT THE REGISTER WHILE SHE DID MORE SHOPPING.

ABOUT 5 MINUTES LATER LAURA (R-1) CAME OVER AND MADE A PAGE OVER OUR P.A. SYSTEM. LAURA ASKED IF ANYONE OWNED A BROWN EXPLORER VAN OUT FRONT TO COME UP TO THE REGISTER. WE WAITED ABOUT 5 MINUTES AND A CUSTOMER AT THE REGISTER SAID WE SHOULD CALL 9-1-1. LAURA CALLED AND THE OPERATOR WANTED SOMEONE TO CHECK TO SEE IF THE VAN WAS LOCKED. I WENT OUT AND CHECKED THE DOORS AND FOUND THEM TO BE LOCKED AND THE KIDS AWAKE. I WENT BACK IN AND TOLD LAURA WHO TOLD THE OPERATOR.

I KEPT MY EYES ON THE VAN FROM THE REGISTER. WE WERE SLOW SO IT WASN'T A PROBLEM. I DID NOT SEE THE LADY WHO OWNED THE VAN LOOK OUT THE WINDOW ONCE. ALL THE EMPLOYEES AND SOME CUSTOMERS INCLUDING THE LADY IN QUESTION WERE TALKING ABOUT THE KIDS IN THE VAN. THE LADY DIDN'T SAY ANYTHING. WE RUNG UP HER PURCHASE. WE WERE VERY SURPRISED TO SEE HER WALK OUT TO THE VAN WHERE THE OFFICERS WERE AT.

I WOULD DESCRIBE HER AS A WHITE FEMALE, 35-40, 5-7, 125-130lbs, BROWN SKIRT, BROWN SHIRT, AND SHOULDER LENGTH SANDY BROWN HAIR.

END OF STATEMENT

INVESTIGATING OFFICER	BADGE	DIV.	APPROVING SUPERVISOR	PAGE
J. COLLENTINE	83	SOUTH PATROL		11/11

Transcribed: 03/23/99 11:50am

COUNTY OF SACRAMENTO, SHERIFF'S DEPARTMENT

NOTICE TO APPEAR, CITATION ☒ **MISDEMEANOR**

539644

SSD FP ☒ ADULT ☐ JUVENILE

DATE	TIME		DAY OF WEEK	REPORT NO.
030999	1400	☐ AM ☒ PM	TUE	99-17553

NAME (FIRST, MIDDLE, LAST)
SUSAN RAE HAMLIN

MAILING ADDRESS / CITY / STATE/ZIP
3340 BEATTY DR. EL DORADO HILLS

BUSINESS ADDRESS/NAME OF SCHOOL IF JUVENILE / CITY / STATE/ZIP
NONE

DRIVER'S LICENSE NO.	STATE	CLASS	BIRTHDATE
N2590993	CA	C	11-09-56

SEX	HAIR	EYES	HEIGHT	WEIGHT	RACE	OTHER DES
M ⓕ	BRN	BLU	59	125	W	

VEHICLE LICENSE NO.	STATE	PASSENGERS	
3UUS848	CA	M 2	C.V. (V.C. 15210B) / H.M. (V.C. 353)

YEAR OF VEH	MAKE	BODY STYLE	COLOR
96	FORD	VAN	BRN

CHECK ONE BOX AND ENTER INFORMATION ☐ REGISTERED OWNER/LESSEE (TRAFFIC ONLY) ☐ PARENT/GUARDIAN (JUVENILE MISDEMEANOR)
NAME (FIRST, MIDDLE, LAST)

MAILING ADDRESS | PHONE NUMBER

ELIGIBLE FOR DISMISSAL (V.C. 40610)

YES NO VIOLATION # CODE SECTION DESCRIPTION — YES ☒ NO ☐ BOOKING REQUIRED

☒☐ PC 273a(b) CHILD NEGLECT/ ENDANGERING

☐☐

☐☐

APPROX. SPEED	PF/MAX SPD	VEH SPD LMT	FINANCIAL RESPONSIBILITY
—	—	—	—

LOCATION OF VIOLATION(S)
ON 10801 OLSON DR, SAC

COMMENTS (WEATHER, ROAD & TRAFFIC CONDITIONS)

☐ OFFENSE(S) NOT COMMITTED IN MY PRESENCE CERTIFIED ON INFORMATION AND BELIEF.

I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT EXECUTED ON THE DATE SHOWN ABOVE AT

ISSUING OFFICER	(PLACE) CALIF	BADGE NO.
T. TAYLOR	SSD	801

NAME OF ARRESTING OFFICER, IF DIFFERENT FROM ABOVE | BADGE NO.

WITHOUT ADMITTING GUILT, I PROMISE TO APPEAR AT THE TIME AND PLACE CHECKED BELOW

X SIGNATURE Susan R Hamlin

☐ TRAFFIC CLERK MUNICIPAL COURT ON OR BEFORE ________ 19__
301 BICENTENNIAL CIRCLE, ROOM 100 SACRAMENTO, CA 95826
HOURS 8 AM TO 4:30 PM M-F AND MONDAY NIGHTS 5 PM TO 8 PM 366-7100

☒ MISDEMEANOR - WITHIN 14 TO 28 DAYS — *AT 8:30 AM ON THE* 9 *DAY OF* APRIL 1999 *IN THE MUNICIPAL COURT, 720 9TH STREET, SACRAMENTO, CA 440-5744*

☐ DATE TIME COURT/ADDRESS

☐ JUVENILE TRAFFIC — *PHONE JUVENILE TRAFFIC COURT OFFICE 366-7250 WITHIN 5 DAYS FOR APPOINTMENT. HOURS 8:30 AM - 4:30 PM*

FORM APPROVED BY THE JUDICIAL COUNCIL OF CALIFORNIA
(R) 1-22-96 VC 40500, 40513(b), PC 853.9

SEE REVERSE SIDE
7400-159 (7401-0391)
8-91 (REV 1/98)

DISTRICT ATTY./COURT COPY WITH REPORT

PUBLIC DEFENDER'S OFFICE
County of El Dorado
630 Main Street
Placerville, CA 95667
(530) 621-6440

Attorney for Defendant

SUPERIOR COURT OF CALIFORNIA

COUNTY OF EL DORADO

STATE OF CALIFORNIA,

Plaintiff,

Vs.

RICHARD HAMLIN,

Defendant.

_____/

CASE NO.: P05CRF0161

DECLARATION OF ROBERT VANCE

I, ROBERT VANCE, declare as follows:

I was a juror in the above-entitled case.

During the jury's deliberations, juror John Arnold told the jury that he had performed an online search for definitions of "great bodily injury". He also said he came up with no information as a result of the search.

During the jury's deliberations, juror John Arnold threatened to walk out on the jury's deliberations at a time when he was apparently in disagreement with the way deliberations were proceeding. RV

During the jury's deliberations, juror Robert Heissner also angrily threatened to walk out on the jury's deliberations at a time when he, too, was apparently in disagreement with the way deliberations were proceeding.

In fact, Mr. Heissner did leave the jury room toward the end of one day. As a result, the remaining jury members recessed for the day.

I declare under penalty of perjury that the foregoing is true and correct and executed on April 11, 2006, at Placerville California.

ROBERT VANCE

PUBLIC DEFENDER'S OFFICE
County of El Dorado
630 Main Street
Placerville, CA 95667
(530) 621-6440

Attorney for Defendant

SUPERIOR COURT OF CALIFORNIA

COUNTY OF EL DORADO

STATE OF CALIFORNIA,

Plaintiff,

Vs.

RICHARD HAMLIN,

Defendant.

_____/

CASE NO.: P05CRF0161

DECLARATION OF PATRICIA REED

I, PATRICIA REED, declare as follows:

I was a juror in the above-entitled case.

During the first week of trial in the above-entitled case, juror John Arnold stated that he thought that a guilty verdict would be a "slam dunk...a no-brainer". This statement was made long before the end of testimony and long before the jury began its deliberations.

During the jury's deliberations, juror John Arnold told the jury that he had performed an online search for definitions of "great bodily injury". He also said he came up with no

information as a result of the search.

During the jury's deliberations, juror John Arnold threatened to walk out on the jury's deliberations at a time when he was apparently in disagreement with the way deliberations were proceeding.

During the jury's deliberations, juror Robert Heissner also angrily threatened to walk out on the jury's deliberations at a time when he, too, was apparently in disagreement with the way deliberations were proceeding.

In fact, Mr. Heissner did leave the jury room toward the end of one day, leaving the jury with 11 members and having to stop deliberations early for the day.

I felt pressure to vote guilty, particularly on the torture charge. If I were able to vote again, I would not vote for guilty.

I understand that Mr. Hamlin will be sentenced to life in prison if the torture conviction stands. I believe that a life sentence is not a fair punishment in this case.

I declare under penalty of perjury that the foregoing is true and correct and executed on April 10, 2006, at Georgetown California.

Patricia Reed

PATRICIA REED

PUBLIC DEFENDER'S OFFICE
County of El Dorado
630 Main Street
Placerville, CA 95667
(530) 621-6440

Attorney for Defendant

SUPERIOR COURT OF CALIFORNIA

COUNTY OF EL DORADO

STATE OF CALIFORNIA,

Plaintiff,

Vs.

RICHARD HAMLIN,

Defendant.

_____/

CASE NO.: P05CRF0161

DECLARATION OF JANET JOHNSON

I, JANET JOHNSON, declare as follows:

I was a juror in the above-entitled case.

During the jury's deliberations, juror John Arnold told the jury that he had performed an online search for definitions of "great bodily injury". At that time, I told Mr. Arnold he should not have done that. He stated something to the effect that maybe he should leave or maybe he shouldn't be there. It was also at that time that he said he found no information as a result of the search.

During the jury's deliberations, juror Robert Heissner also angrily threatened to walk out on the jury's deliberations at a

time when he apparently sensed general dissension within the jury because of the way members were behaving.

In fact, Mr. Heissner did leave the jury room toward the end of one day. As a result, the remaining jury members recessed for the day.

I declare under penalty of perjury that the foregoing is true and correct and executed on April 10, 2006, at Cameron Park, California.

Janet B Johnson

JANET JOHNSON

MEDIA AGENCY (name): ABC NEWS PRIMETIME
CHANNEL/FREQUENCY NO.:
PERSON SUBMITTING REQUEST (name): CHRISTINE K. MURPHY
ADDRESS: 147 Columbus Avenue NY, NY 10023
FAX # 212-456-6092
TELEPHONE NO.: 212-456-6583
Insert name of court and name of judicial district and branch court, if any.

FOR COURT USE ONLY

EL DORADO CO. SUPERIOR CT.
FILED 4-5-06
BY Shelly M. Warren Deputy

TITLE OF CASE:

NAME OF JUDGE: HONORABLE EDDIE T. KELLER

ORDER ON MEDIA REQUEST TO PERMIT COVERAGE

CASE NUMBER

AGENCY MAKING REQUEST (name): ABC NEWS PRIMETIME

1. a. ☐ No hearing was held.
   b. ☐ Date of hearing: Time: Dept./Div.: Room:
2. The court considered all the relevant factors listed in subdivision (e)(3) of California Rules of Court, rule 980 *(see reverse)*.
3. ☐ **THE COURT FINDS** *(findings or a statement of decision are optional)*: ☐ Attached ☐ As follows:

THE COURT ORDERS

4. The request to photograph, record, or broadcast is
   a. ☐ **denied**.
   b. ☒ **granted** subject to the conditions in rule 980, California Rules of Court, **AND** the following:
      (1) ☐ The local rules of this court regulating media activity outside the courtroom *(copy attached)*.
      (2) ☐ The order of the presiding or supervising judge regulating media activity outside the courtroom *(copy attached)*.
      (3) ☐ Payment to the clerk of increased court-incurred costs of *(specify)*: $ ☐ to be determined.
      (4) ☐ The media agency shall demonstrate to the court that the proposed personnel and equipment comply with California Rules of Court, rule 980, and any local rule or order.
      (5) ☐ Personnel and equipment shall be placed ☐ as directed ☐ as indicated in the attachment ☐ as follows *(specify)*:
      (6) (i) ☐ The attached statement of agreed pooling arrangements is approved.
          (ii) ☐ A statement of agreed pooling arrangements satisfactory to the court shall be filed before coverage begins.
      (7) ☐ This order
          (i) ☐ shall not apply to allow coverage of proceedings that are continued.
          (ii) ☐ shall apply to allow coverage of proceedings that are continued.
      (8) ☒ Other *(specify)*: TV cameras may be utilized only before and after court proceedings. No pictures may be taken of jurors without their consent. Audio during court proceedings is allowed.
5. Coverage granted in item 4b is permitted in the following proceedings:
   a. ☐ All proceedings *except* those prohibited by California Rules of Court, rule 980, and those proceedings prohibited by further court order.
   b. ☐ Only the following proceedings *(specify type or date or both)*:
6. ☐ The order made on *(date)*: is ☐ terminated ☐ modified as follows *(specify)*:
7. ☐ Number of pages attached:

Date: 4/5/06

Eddie Keller
JUDGE

(See reverse for additional information)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF EL DORADO
495 Main Street
Placerville, California 95667
Voice: (530) 621-6426
Fax: (530) 622-9774

APRIL 4, 2006

DEBORAH FLORES, PARALEGAL/CONVICTION MONITORING
THE STATE BAR OF CALIFORNIA
180 HOWARD STREET
SAN FRANCISCO, CA 94105-1639

RE: PEOPLE OF THE STATE OF CALIFORNIA VS RICHARD WILLIAM HAMLIN
EL DORADO COUNTY SUPERIOR COURT NO. P04CRF0132

DEAR MS. FLORES:

I AM IN RECEIPT OF YOUR LETTER OF MARCH 28, 2006 WHEREIN YOU HAVE REQUESTED THAT OUR COURT PROVIDE YOU WITH CERTIFIED COPIES OF THE JUDGMENT AND SENTENCING DOCUMENTS AND THE REGISTER OF ACTIONS IN THE ABOVE-ENTITLED MATTER.

PLEASE BE ADVISED THAT MR. HAMLIN HAS NOT YET BEEN SENTENCED AND THAT THE NEXT SCHEDULED DATE FOR THE HEARING RE JUDGMENT AND SENTENCING IS MAY 5, 2006.

A CERTIFIED COPY OF THE REGISTER OF ACTIONS IS ENCLOSED FOR YOUR REFERENCE. ALSO, I AM RETURNING TO YOU THE NOTICE OF APPEAL/LACK OF APPEAL FORM YOU PROVIDED WHICH IS NOT YET RELEVANT TO THIS MATTER.

PLEASE FEEL FREE TO CONTACT ME AT (530) 621-6496 SHOULD YOU HAVE ANY QUESTIONS REGARDING THIS MATTER.

VERY TRULY YOURS,

EL DORADO COUNTY SUPERIOR COURT

BY: Lynn Cavin
LYNN CAVIN, APPEALS CLERK

LC:SS
ENCLS.

CMS

NOTICE OF APPEAL/LACK OF APPEAL
FORM

Please check, sign, date and return the **ORIGINAL** of this form in the enclosed self-addressed postage prepaid envelope.

IN REGARD TO THE CRIMINAL CONVICTION OF RICHARD W. HAMLIN
EL DORADO COUNTY SUPERIOR COURT, CASE NUMBER P04CRF0132

Please check **one** of the following:

___ The time period for filing a Notice of Appeal has expired and a Notice of Appeal was **not** filed in the above-referenced matter.

___ A Notice of Appeal has been filed in the above-referenced matter and attached is a certified copy of the Notice of Appeal.

COURT LOCATION: EL DORADO COUNTY SUPERIOR COURT
PLACERVILLE, CALIFORNIA

Dated: _____ By: _____
Court Clerk or Designee

PUBLIC DEFENDER'S OFFICE
County of El Dorado
620 Main Street
Placerville, CA 95667
(530) 621-6440

Attorneys for Defendant

SUPERIOR COURT OF CALIFORNIA

COUNTY OF EL DORADO

STATE OF CALIFORNIA,	CASE NUMBER: P05CRF0161
Plaintiff,	NOTICE OF MOTION AND MOTION TO SET ASIDE VERDICT OF GUILTY (Penal Code Section 1385)
VS.	Hearing Date: 5-5-06
RICHARD HAMLIN,	Hearing Time: 1:30 p.m.
Defendant.	Department: 2

_____/

TO: GARY LACY, DISTRICT ATTORNEY OF EL DORADO COUNTY:

NOTICE IS GIVEN that on the date and time above-noted, or as soon thereafter as the matter may be heard, in the above-noted department of the above-entitled court, defendant RICHARD HAMLIN will move pursuant to Penal Code Section 1385 for an order setting aside the jury's verdict and dismissing Count I, Penal Code Section 206 (Torture), in the above-entitled case.

This motion will be made on the grounds that:

1. There is insufficient evidence to support the verdict; and

CMS

EK

2. It is in the furtherance of justice to do so.

This motion is based on this notice of motion, the attached memorandum of points and authorities, all pleadings, records and files herein, and on such oral and documentary evidence as may be presented at the time of the hearing.

Dated: March 28, 2006.

Robert Banning

ROBERT BANNING
Attorney for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

I

STATEMENT OF FACTS

In the above-entitled case, Mr. Hamlin was charged with 18 felony counts. In six of those counts, felony sentencing enhancements were attached. A jury trial was held in Department 2 of the Superior Count of California, County of El Dorado, before the Honorable Eddie T. Keller. Upon completion of the trial, the case was sent to the jury to decide the 18 felony counts, six enhancements, and three lesser included misdemeanors.

The Court required the prosecution to make an election as to what alleged conduct constituted the bases of Counts 5 through 18. The Court memorialized the prosecution's elections in answering Jury Question #9 (a copy of the question is

attached as Exhibit #1). The Court's response specifically set forth what specific acts must be proved as to each count.

The jury returned the following verdicts on January 10, 2006:

As to Count 10, not guilty of Penal Code Section 245, assault with a deadly weapon. The plaintiff argued as to this count that Mr. Hamlin used a sword to nearly cut off Ms. Hamlin's finger.

As to Count 11, not guilty of Penal Code Section 422, making criminal threats, and Penal Code Section 12022(a), being armed with a firearm. The prosecution argued that Mr. Hamlin slept with Ms. Hamlin at his side while holding a gun and making the threat that if she moved he would shoot her.

As to Count 12, not guilty of Penal Code Section 236, false imprisonment by use of force or violence, and Penal Code Section 12022(a), being armed with a firearm. The prosecution argued that Mr. Hamlin kept Ms. Hamlin in their bedroom at gunpoint.

As to Count 18, not guilty of Penal Code Section 245(a)(1), assault with a deadly weapon. The prosecution argued that Mr. Hamlin struck Ms. Hamlin with a stick and a pipe.

As to Count 16, not guilty of Penal Code Section 246.3, discharge of a firearm in a grossly negligent manner. The prosecution argued and the law requires that the discharge was grossly negligent and was done in such a manner "which could result in injury or death to a person".

As to Count 7, not guilty of Penal Code Section 273.5, spousal abuse. The prosecution argued that Mr. Hamlin beat Ms. Hamlin while Mark Steenberg was visiting their home. Ms. Hamlin testified that she screamed, "Help me, help me!" because Mr. Hamlin was beating her in the master bedroom. Mr. Steenberg in fact heard Ms. Hamlin yell, "Help me, help me".

As to Count 8, not guilty of Penal Code Section 236, false imprisonment by use of force or violence. The prosecution argued that while Mark Steenberg was visiting their home, Mr. Hamlin forcibly restrained Ms. Hamlin in their bedroom after Mr. Hamlin supposedly beat her.

As to Count 9, guilty of Penal Code Section 273.5, spousal abuse, but found that Mr. Hamlin did not personally inflict great bodily injury on Ms. Hamlin. The prosecution argued that great bodily injury was inflicted by Mr. Hamlin by breaking Ms. Hamlin's ribs.

As to Count 17, guilty of Penal Code Section 273.5, spousal abuse, but found that Mr. Hamlin did not personally inflict great bodily injury on Ms. Hamlin. The prosecution argued that great bodily injury was inflicted by Mr. Hamlin by breking Ms. Hamlin's nose.

As to Count 5, Penal Code Section 245(a)(1), assault by means of force likely to produce great bodily injury, the jury was deadlocked. This count has been dismissed. The prosecution argued that Mr. Hamlin threw Ms. Hamlin head first into a file

cabinet, leaving the cabinet dented, then thrown into shelves, cutting Ms. Hamlin's back and causing her to bleed. The prosecution argued that Mr. Hamlin then beat Ms. Hamlin in the head and face area as she tried to call 911.

As to Count 14, Penal Code Section 245(a)(1), assault with a deadly weapon while personally using a firearm pursuant to Penal Code Section 12022.5(a), the jury was deadlocked. This count has been dismissed. The prosecution argued that Mr. Hamlin took Ms. Hamlin into a dark field and put a gun in her mouth.

As to Count 15, Penal Code Section 422, making a criminal threat while personally using a firearm pursuant to Penal Code Section 12022.5(a), the jury was deadlocked. This count has been dismissed. The prosecution argued that Mr. Hamlin took Ms. Hamlin into a dark field and, after pointing a gun at her, asked her if she was "ready to die".

As to Counts 2, 3, and 4, not guilty of Penal Code Section 273a(a), felony child endangerment. The jury found Mr. Hamlin guilty of three violations of Penal Code Section 273a(b), a lesser included offense of misdemeanor child endangerment. In so finding, the jury rejected the felony requirement that Mr. Hamlin performed acts "that likely could produce great bodily harm of death". The misdemeanor findings meant that the children were subjected to mental suffering.

II

THE DEFENSE REQUESTS THAT THIS COURT DISMISS COUNT I, PENAL CODE SECTION 206, TORTURE, DUE TO INSUFFICIENCY OF THE EVIDENCE

A court has authority under Penal Code Section 1385 to dismiss a prosecution in the "furtherance of justice" at any time, including after trial. Dismissals under section 1385 may be proper before, during and after trial (People v. Orin (1975) 13 Cal.3d 937; People v. Orabuena (2004) 116 Cal.App.4th 84).

As the California Supreme Court stated in People v. Superior Court (1968) 69 Cal.2d 491, 503: "It would seem that, if anything, a court should have broader discretion to dismiss in furtherance of justice after the verdict than it should have during trial. After the verdict, the judge has heard the evidence of the prosecution; whereas prior to the conclusion of the trial there is always the possibility that in the absence of dismissal more evidence may be received."

The power invested in the court by section 1385 is a discretionary power that rests solely with the court. The power of the court to dismiss on its own motion is unaffected by prosecution objection.

As the Court noted in People v. Tenorio (1970) 3 Cal.3d 89, 94: "The judicial power is compromised when a judge, who believes that a charge should be dismissed in the interests of justice, wishes to exercise the power to dismiss but finds that before he may do so he must bargain with the prosecutor. A

judicial power must be independent, and a judge should never be required to pay for its exercise."

The California Supreme Court has held that "the discretion of the judge (under section 1385) is absolute except where the Legislature has specifically curtailed it" (People v. Superior Court, supra, at page 502.

A trial court has authority to dismiss an action or any part of an action (People v. Salgado (2001) 88 Cal.App.4th 5; People v. Superior Court (Romero) (1996) 13 Cal.4th 497).

The California Supreme Court has articulated several factors this Court should consider in deciding whether to dismiss a case or count after a jury verdict. In People v. Superior Court (1968) 69 Cal.2d 491, the California Supreme Court found that a dismissal of a case or count due to the "insufficiency of the evidence to prove guilt beyond a reasonable doubt" after a jury returned a verdict of guilty would be a proper grounds and in the "furtherance of justice" pursuant to section 1385.

THERE WAS INSUFFICIENT EVIDENCE TO UPHOLD THE JURY'S VERDICT OF GUILTY AS TO COUNT I, PENAL CODE SECTION 206, TORTURE

The prosecution relied on the testimony of Susan Hamlin and, to a lesser extent, Ryan and Alec Hamlin to argue that Mr. Hamlin was guilty of the charged offenses. The prosecution

presented evidence that the torture charge occurred over a period of time and was a course of conduct.

Consistent with that position, the prosecution presented a series of events in which the prosecution claimed Mr. Hamlin committed acts that constituted torture and separately constituted specific acts of criminal conduct.

The indictment presented to the jury had 18 felony counts, six of which included sentencing enhancements. The indictment presented as Count I Penal Code Section 206. That count covered June 1, 2003, through February 29, 2004. The remaining 17 counts were the specific acts within that time frame that constituted torture. The prosecution was consistent with each witness as to specific events and acts that were put forth to prove torture and the specific crime attached to that specific event.

The prosecution did not argue or present any significant evidence that was separate and apart from the 17 counts of specific incidents to support its claim that torture had occurred.

Thus, in examining whether there is sufficient evidence to uphold the guilty verdict of torture, it is essential to examine the jury's other verdicts. More pointedly, the defense is asking this Court to examine whether there is sufficient evidence of "great bodily injury" as mandated in Penal Code

Section 206, torture, in light of the jury's finding in its other verdicts.

The prosecution specifically asked the jury to decide if there was "great bodily injury" on two counts, Counts 9 and 17.

In Count 9, the prosecution charged Mr. Hamlin with violating Penal Code Section 273.5, spousal abuse, and added the enhancement of Penal Code Section 12022.7, alleging that Mr. Hamlin personally inflicted great bodily injury on Ms. Hamlin. The prosecution argued, and this Court so instructed the jury in answering Jury Question #9, that the "great bodily injury" was Susan Hamlin's broken ribs. The Court in its written response to Jury Question #9 stated that the act was the breaking of Ms. Hamlin's ribs which occurred on "Super Bowl Sunday", February 1, 2004. In fact, the Court wrote that this was "the rib breaking incident". The Court's reference was consistent with the manner in which the prosecution presented its evidence, breaking down the evidence into "incidents" or "events".

The jury found Mr. Hamlin guilty of the violation of Penal Code Section 273.5, spousal abuse, but found that Mr. Hamlin did not personally inflict great bodily injury on Ms. Hamlin in violation of Penal Code Section 12022.7. Thus, one of the most significant of the prosecution's arguments, that Mr. Hamlin committed torture by inflicting great bodily injury by breaking Ms. Hamlin's ribs, was rejected by the jury. The prosecution argued that the broken ribs occurred on February 1, 2004. There

was no evidence that the injury occurred at some other time and, in fact, the jury was instructed by the Court that the "rib breaking incident" occurred on "Super Bowl Sunday", February 1, 2004.

Therefore, in analyzing whether there was sufficient evidence of great bodily injury for torture, this Court cannot rely on the evidence of Ms. Hamlin's broken ribs.

In Count 17, the prosecution charged Mr. Hamlin with violating Penal Code Section 273.5, spousal abuse, and added the enhancement of Penal Code Section 12022.7(a), alleging that Mr. Hamlin personally inflicted great bodily injury on Ms. Hamlin. The prosecution argued and this Court so instructed the jury in answering Jury Question #9, that the "great bodily injury" was the breaking of Ms. Hamlin's nose during the "laundry room incident" on February 22, 2004.

The jury found Mr. Hamlin guilty of violating Penal Code Section 273.5, spousal abuse, but found that Mr. Hamlin did not personally inflict great bodily injury on Ms. Hamlin in violation of Penal Code Section 12022.7. Again, one of the prosecution's significant arguments that Mr. Hamlin committed torture by inflicting great bodily injury by breaking Ms. Hamlin's nose was rejected by the jury. Once again, this injury was limited by the prosecution's argument, this Court's instruction, and the evidence to have occurred on February 22, 2004, in "the laundry room incident".

Therefore, in analyzing whether there was sufficient evidence of great bodily injury for torture, this Court cannot rely on the evidence of Ms. Hamlin's broken nose.

The prosecution presented evidence of other "incidents" from which the jury could have inferred great bodily injury for the torture count. However, the jury, upon hearing the prosecution's evidence, found Mr. Hamlin not guilty of those counts based on those other "incidents".

In Count 10, the prosecution charged Mr. Hamlin with violating Penal Code Section 245(a)(1), assault with a deadly weapon, a sword. The prosecution argued and this Court so instructed the jury that this count alleged that Mr. Hamlin used a sword to nearly cut off Ms. Hamlin's right ring finger. This offense allegedly occurred during the time period encompassed by the torture charge. Count 10 was alleged to have been committed from February 10 to February 11, 2004, according to this Court's instructions to the jury.

The jury found Mr. Hamlin not guilty as to County 10 and the alleged sword incident. Therefore, in analyzing whether there was sufficient evidence of great bodily injury for torture, this Court cannot rely on any evidence that Mr. Hamlin nearly cut off Ms. Hamlin's finger.

In Count 18, the prosecution charged Mr. Hamlin with violating Penal Code Section 245(a)(1), assault with a deadly weapon. The prosecution argued and this Court so instructed the

jury in response to Jury Questions #9 and #16 that Mr. Hamlin struck Ms. Hamlin with a "stick, board, and pipe in the garage prior to going into the laundry room on February 22, 2004". The prosecution further argued that bruises that were seen on Ms. Hamlin were a result of this alleged assault.

The jury found Mr. Hamlin not guilty as to Count 18. Therefore, in analyzing whether there was sufficient evidence of great bodily injury for torture, this Court cannot rely on the charge that Ms. Hamlin was struck by Mr. Hamlin with a stick, board, or pipe.

In Counts 7 and 8, Mr. Hamlin was charged with violating Penal Code Sections 273.5, spousal abuse, and 236, false imprisonment by use of force or violence. The prosecution argued and this Court so instructed the jury in response to Jury Question #9 that Mr. Hamlin allegedly committed these offenses in the master bedroom of the Hamlin home during the weekend of February 7, 2004, to February 9, 2004, while Mark Steenberg visited and stayed at the home. Ms. Hamlin testified that she was beaten so badly that she screamed out, "Help me, help me!" in an attempt to have Mr. Steenberg come to her aid. Ms. Hamlin further claimed that Mr. Hamlin held her and prevented her from leaving the bedroom as she attempted to flee to safety.

The jury found Mr. Hamlin not guilty as to both Counts 7 and 8. This was referred to as the Mark Steenberg incident. Therefore, in analyzing whether there was sufficient evidence of

great bodily injury for torture, this Court cannot rely on the allegation that Ms. Hamlin was beaten and unlawfully restrained during this "incident".

In Counts 11 and 12, Mr. Hamlin was charged with violating Penal Code Sections 422, making criminal threats, and 236, false imprisonment by use of force or violence. It was additionally alleged that in the commission of those two crimes Mr. Hamlin violated Penal Code Section 12022(a) by being armed with a firearm. The prosecution argued and this Court so instructed the jury in response to Jury Question #9 that Mr. Hamlin unlawfully restrained Ms. Hamlin by sleeping with her by his side while he held a gun. Further, Mr. Hamlin allegedly told Ms. Hamlin that if she moved he would shoot her. The prosecution and this Court stated that the two acts occurred in the Hamlin master bedroom between February 10, 2004, and February 11, 2004.

The jury found Mr. Hamlin not guilty as to both Counts 11 and 12. Therefore, in analyzing whether there was sufficient evidence of great bodily injury for torture, this Court cannot rely on the allegations of this incident.

In Counts 2, 3, and 4, Mr. Hamlin was charged with violating Penal Code Section 273a(a), child endangerment under circumstances likely to produce great bodily injury or death. The jury found Mr. Hamlin not guilty of Counts 2, 3, and 4, but did find Mr. Hamlin guilty of the lesser included offense of

child endangerment under circumstances other than those likely to produce great bodily injury or death. Counts 2, 3, and 4 were felony charges. The jury's verdicts were as to misdemeanor charges. In finding Mr. Hamlin not guilty of Counts 2, 3, and 4, the jury rejected the felony requirement that Mr. Hamlin did acts "likely to produce great bodily injury or death".

In Count 16, the prosecution charged Mr. Hamlin with violating Penal Code Section 246.3, discharge of a firearm in a grossly negligent manner. The prosecution argued and the law requires that the discharge was grossly negligent and done in such a way "which could result in injury or death to a person".

The jury found Mr. Hamlin not guilty of this charge as well.

The not guilty verdicts in Counts 2, 3, 4, and 16 do not include incidents that the defense believes the jury could have used to find "great bodily injury" to Ms. Hamlin for the torture charge. However, it is further evidence of the jury's findings that Mr. Hamlin did not do anything that constituted the infliction of great bodily injury or even attempt to inflict great bodily injury on Ms. Hamlin or anyone else.

In Count 5, the prosecution charged Mr. Hamlin with violating Penal Code Section 245(a)(1), assault by means of force likely to produce great bodily injury. The prosecution argued and this Court so instructed the jury in response to Jury Question #6 that the alleged assault took place in the office at

the Hamlin home on September 17, 2003. Ms. Hamlin testified that Mr. Hamlin threw her head first into a file cabinet, leaving the cabinet dented. She further testified that Mr. Hamlin then threw her into shelves, cutting her back in three places, and that she was then beaten about the face and head as she tried to call 911.

The jury deadlocked on this Count, unable to reach a decision. The prosecution moved for dismissal of this Count. This Court granted the motion and dismissed Count 5. Due to the jury's inability to find Mr. Hamlin guilty on this Count, this Court cannot rely on this incident or this evidence in making a determination about the sufficiency of the evidence concerning great bodily injury for torture.

In Counts 14 and 15, Mr. Hamlin was charged with violating Penal Code Sections 245(a)(1), assault with a deadly weapon, and 422, making criminal threats. The prosecution also charged Mr. Hamlin with violating Penal Code Section 12022.5(a), personally using a firearm in the commission of those two crimes. The jury deadlocked on both of those Counts, unable to reach decisions. The prosecution moved for dismissal of these two Counts. This Court granted that motion and dismissed Counts 14 and 15.

It is the defense's position that these two Counts would not have provided any evidence that Mr. Hamlin committed "great bodily injury" on Ms. Hamlin that could be considered for the torture charge in any regard. However, given the jury's

inability to find Mr. Hamlin guilty as to either of these two Counts, it becomes a moot point. The deadlock and dismissal precludes this Court from considering the evidence or incidents in determining whether there was sufficient evidence of great bodily injury for torture.

Of the 17 felony Counts other than the torture charge, the jury found Mr. Hamlin guilty of two counts of spousal abuse but found that he did not personally inflict great bodily injury as to those Counts. The jury also found Mr. Hamlin guilty of one other count of spousal abuse (Count 13) but the prosecution did not even allege infliction of great bodily injury as to that Count. The other guilty verdicts, three counts of misdemeanor child endangerment and one felony Count of making a criminal threat, do not involve evidence of Mr. Hamlin committing "great bodily injury" towards Ms. Hamlin, the named victim of the torture charge.

What this Court is left with is absolutely no evidence of Mr. Hamlin personally inflicting great bodily injury on Ms. Hamlin. In Counts 2 through 18, the jury made its findings very clear---Mr. Hamlin did not personally inflict great bodily injury on Ms. Hamlin.

This Court does not have any other evidence to rely on in supporting the jury's finding beyond a reasonable doubt that Mr. Hamlin personally inflicted great bodily injury for purposes of the torture charge. The prosecution followed the grand jury's

lead in presenting this case. The grand jury charged Mr. Hamlin with committing torture, a violation of Penal Code Section 206, the most serious crime that covered an extended period of time. It then went about the task of charging Mr. Hamlin with the specifics of torture by alleging specific crimes where great bodily injury was either alleged or could be inferred. The remaining 17 Counts were alleged within the torture charge time frame. The prosecution in its presentation proceeded in the same manner.

The prosecution drew out evidence through its witnesses about "events" or "incidents" that the prosecution argued constituted torture. Those events or incidents constituted the evidence for the 17 other charged offenses. The prosecution never argued nor did it present evidence that was separate and apart from the 17 other Counts that made a case for torture. This was not a case in which the prosecution argued the evidence that supported Counts 2 through 18 was different than what it was arguing for the torture charge.

There was no additional evidence that would support a finding that Mr. Hamlin committed great bodily injury in connection with the torture charge.

A review of the evidence reveals there were no other "events" or "incidents" that can be pointed to or that separately support the torture charge. The jury reviewed the

events and incidents and found overwhelmingly that Mr. Hamlin did not inflict great bodily injury on Ms. Hamlin.

Penal Code Section 1385 gives this Court the mechanism to correct the jury's unsupported verdict of guilt as to Count I, torture. Section 1385 allows this Court to dismiss a count after a jury verdict for which there is insufficient evidence to support its verdict. This case calls out for and demands such a finding by this Court.

III

AS A SEPARATE BASIS FOR DISMISSAL, THE DEFENSE REQUESTS THAT THIS COURT DISMISS COUNT I, PENAL CODE SECTION 206, IN THE FURTHERANCE OF JUSTICE

When a Court is deciding whether to dismiss a count or case based on the furtherance of justice, there are several factors to consider. In People v. Andrade (1978) 86 Cal.App.3rd, the Court stated, "Among facts to be considered by the trial court in determining whether to dismiss a charge in furtherance of justice, are:

1) Weight of the evidence indicative of guilt or innocence,

2) Nature of the crime involved,

3) Whether the defendant is or has been incarcerated awaiting trial or has been sentenced in a related or similar case,

4) Length of such incarceration,

5) Possibility of harassment to the defendant,

6) Likelihood of new or additional evidence,

7) Effect on protection to society in case the defendant should actually be guilty, and

8) Probability of greater incarceration upon conviction of other offenses."

A statute allowing for dismissal of a criminal action in the furtherance of justice requires consideration both of constitutional rights of the defendant, and the interests of society represented by the prosecution, in determining whether there should be a dismissal (People v. Romero, supra).

In exercising its discretion to dismiss charges or allegations in furtherance of justice, the court should consider the nature and circumstances of the defendant's current crimes, prior convictions, and the particulars of his background, character, and prospects (People v. Orabuena, supra).

Based on the factors articulated by the appellate Courts, the defense requests that this Court dismiss Count I, Penal Code Section 206, Torture, based on the following factors in this case which constitute a furtherance of justice pursuant to Penal Code Section 1385:

1) Even if this Court finds sufficient evidence to support the jury's finding of guilt as to Count I, torture, Mr. Hamlin's acts are not what the Legislature intended to prohibit by creating Penal Code Section 206;

2) Mr. Hamlin's personal background and the circumstances of the offense;

3) Even if this Court dismisses Count I, torture, this Court can punish Mr. Hamlin sufficiently while protecting society and avoiding an excessive penalty.

A

EVEN IF THIS COURT FINDS SUFFICIENT EVIDENCE TO SUPPORT THE JURY'S FINDING OF GUILTY AS TO COUNT I, TORTURE, MR. HAMLINS' CONDUCT IS NOT WHAT THE LEGISLATURE INTENDED TO PROHIBIT BY CREATING PENAL CODE SECTION 206

Penal Code Section 1385 has been interpreted by the courts to give the trial judge the power to dismiss a count or case after a jury has returned its verdicts and even if the trial judge finds there was sufficient evidence to sustain the guilty verdict on appeal, if it would further the interests of justice (People v. Superior Court (1968), supra).

Based on the evidence presented and the jury's findings of what Mr. Hamlin did and did not do, Penal Code Section 206, torture, was never intended to apply to Mr. Hamlin's conduct. Section 1385 gives this Court the power to correct the inappropriate application of Section 206, torture, in this case and this Court can act in the furtherance of justice.

Section 206, torture, was created to punish the most violent conduct, short of murder, not covered by other Penal Code sections. People v. Barrera (1993) 14 Cal.App.4th 1555

stated that section 206 was intended "to fill a gap in existing law dealing with extremely violent and callous criminal conduct."

Section 206, torture, was not intended to punish conduct already covered by Penal Code Sections 245 (assault with a deadly weapon or by force likely to produce great bodily injury), 273.5 (spousal abuse), and their corresponding enhancements. Clearly the Legislature intended to outlaw more egregious and violent conduct. The intent is evident by the imposition of the most severe punishment of life in prison.

In order to understand the legislative intent, this Court should examine the case that gave birth to the torture statute.

The crime of torture was codified in 1990 in California after the passage of Proposition 115 because a man named Lawrence Singleton fell through the cracks of the justice system. The crime that Singleton committed generated international anger.

> Singleton picked up a fifteen-year old hitchhiker, Mary Vincent. Singleton kidnapped, raped and sodomized her. Then Singleton cut the ropes from her hands. He took a hatchet and chopped off Mary's left hand, then her right. He threw her over the side of the road, climbed down, shoved her into a drainage culvert and told her she was free. Mary made her way out of the culvert after Singleton left and after hours of wandering was discovered and given medical aid. She was hospitalized for one month. (People v. Singelton (1980) 112 Cal.App.3rd 418.)

The public was outraged at the sentence Singleton received. He was sentenced to 14 1/3 years in state prison. In 1987

Singleton was paroled after serving just more than half his sentence. He ended up living in a trailer on the grounds of San Quentin Prison because no community wanted to accept him as a parolee. After his release from parole Singleton moved to Florida. In 1998, a jury in Tampa convicted him of murdering a mother of small children who worked as a prostitute. He had stabbed the 31-year old woman to death in his residence and he received the death penalty for this murder. Waiting for the sentence to be carried out, he died in prison of cancer in 2001.

A survey of published Penal Code Section 206, torture, cases reveals that the vast majority of the initial filings were consistent with the statute's legislative intent, to punish extreme violence not covered by existing Penal Code sections.

In People v. Hale (1999) 75 Cal.App.4th 94, the defendant broke into the victim's home and entered her bedroom as she slept beside her 3-year old daughter. The defendant struck the victim twice in the face with a ballpeen hammer as she slept. The victim suffered numerous broken teeth, numerous chipped teeth, a cut lip that required stitches, and cuts on her face which required stitches. The victim, due to these injuries, had to have a root canal, teeth extracted, and bridge work. After the defendant inflicted the injuries he stayed to watch her pain and terror and then left.

In People v. Baker (2002) 98 Cal.App.4th 1217, the defendant poured gasoline over his wife and set her on fire.

The victim suffered second and third degree burns that required skin grafts, infected lungs, and disfigurement. After the defendant set the victim ablaze, he stayed to watch her burn.

In People v. Lewis (2004) 120 Cal.App.4th 882, the defendant beat the victim with an aluminum bat for two hours. The victim suffered a collapsed lung, broken femur, broken patella, broken ribs and a concussion. The victim was hospitalized for 2 ½ weeks, where she had a tube put in her lung and a rod in her leg.

These cases are just a few examples of the "Singleton"-type conduct the Legislature intended to punish with the maximum penalty of life imprisonment.

However, a very disturbing trend has been growing in frequency in the last few years. Prosecutors have been unfairly using Penal Code Section 206 in cases where the defendant's conduct falls well short of "Singleton"-type conduct and is appropriately covered by existing Penal Code sections. Although the Legislative intent was clearly stated, the written requirements for section 206, torture, were poorly and vaguely assembled.

The Legislature wanted to punish the most violent offenders who committed extreme violence. They wanted to stop the Larry Singletons of the world. The Legislature determined that these most violent offenders qualified for the most severe of prison sentences---life. However, when section 206, torture, was

created, it was immediately attacked for its vague and overbroad "definition" of torture.

The concern was that the overbroad language in section 206 could allow prosecutors to abuse their discretion in filing a torture charge in a situation that clearly was not intended. Very quickly, it became apparent that torture with its life term could be used in a case in which the defendant's conduct was in violation of Penal Code Sections 245 (assault by means of force likely to produce great bodily injury) and 273.5 (spousal abuse).

Now as a result, conduct which would have been punished by 2, 3, or 4 years in state prison pursuant to sections 245 or 273.5 could be punished by life in prison by charging torture.

The miscarriage of justice is that the filing of Penal Code Section 206, torture, in those instances was <u>not</u> because the defendant's conduct was so extreme or more egregious than what sections 245 or 273.5 prohibited, rather, the filing occurred because section 206's "definition" of torture was so overbroad and vague.

Clearly, the intent of the Legislature was not to turn Penal Code Section 245 or Penal Code Section 273.5 cases into offenses that carry a life term in prison. Yet, through abusive filings of Penal Code Section 206 in these cases, that is what is occurring.

Prosecutors have twisted the intent of the torture statute so that those committing domestic violence or spousal abuse can be charged with torture for crimes that simply do not rise to the level of the criminal intent and injury that Singleton committed.

The defense's concern and its contention that Penal Code Section 206, torture, is being improperly used by prosecutors in violation of the Legislative intent was shared by Justice McIntyre of the Court of Appeal, Fourth District.

In People v. Pre (2004) 17 Cal.App.4th 413, the defendant, who did not know the victim, choked the victim to the point of unconsciousness twice, fractured her cheek which caused dental problems, broke her ribs, injured an internal organ, damaged her little finger to the point it had to be amputated, and bit her ear so severely that it required 100 stitches.

Despite these injuries, which are far more sever than what the jury in this case found that Mr. Hamlin committed, Justice McIntyre felt that this was not a case that the Legislature intended to be filed as torture.

In fact, Justice McIntyre voiced the same concern that torture was being improperly used in cases where the defendant's conduct was covered by previously existing Penal Code section that carried significantly lesser punishments.

In the Pre case, despite the severity of the injuries to the victim, Justice McIntyre decided he did not want to impose

the term of life for the crime of torture. Justice McIntyre explained his reluctance to impose a torture conviction in his dissenting opinion:

> I agree with the majority's analysis of Pre's contentions on appeal, except as to the sufficiency of the evidence to support the jury's finding that Pre acted with specific intent to cause cruel or extreme pain or that he acted for revenge, persuasion or any sadistic purpose. On this latter issue, I respectfully dissent.
>
> The crime of torture was codified in California in June 1990, when the California electorate passed Proposition 15 in response to the facts in People v. Singleton (1980) 112 Cal.App.3d 418. People v. Jung (1999) 71 Cal.App.4th 1036, 1044 (dis.opn. Armstrong, J.) In that case, Singleton kidnapped and sexually abused his victim, then chopped off her hands and dumped her in a ditch in a remote location. He was later charged with and convicted of attempted murder, mayhem, kidnapping, and multiple sex crimes, which resulted in a sentence of fourteen years, four months in prison. Singleton was paroled after having served just seven years in prison and thereafter the new crime if torture was included in proposition 115 "to insure that crimes such as Singleton's receive a minimum punishment of life imprisonment". (Ibid., quoting *Sen Com. on Judidiary, Assem. Com. On Public Safety, Joint Hearing on Crime Victims Justice Reform Act* (1990) pt. 3, at p. 005.)
>
> Penal Code Section 206 was not included to alter the existing legal definition of torture, but was codified to insure that conduct amounting to torture would be punished by no less than life in prison even in situations where the victim survives, as in Singleton. (People v. Barrera (1993) 14 Cal.App.4th 1555, 1564) The majority recognizes as much, noting that the adoption of Penal Code section 206 was intended "to fill a gap in existing law dealing with extremely violent and callous criminal conduct." (Maj.opn. p. 13, quoting People v. Barrera, supra, 14 Cal.App.4th at p. 1572)
>
> Notwithstanding the original intent underlying the adoption of Penal Code Section 206, the application of the statute has expanded, by judicial accretion, to any assault in which the victim suffers "great bodily injury" where the jury infers an intent to inflict cruel and extreme pain, regardless of whether the assailant's conduct was extremely

violent and callous. (See, e.g. People v. Hale (1999) 75 Cal.App.4th 94, 108 [holding that the crime of torture focuses on the mental state of the perpetrator, not on whether actual pain was inflicted]). Under such an application of the statute, virtually any aggravated assault proscribed by Penal Code Section 245 that results in great bodily injury may qualify as torture under Penal Code Section 206; if the jury infers the requisite intent from the defendant's conduct, the defendant will be subject to a life sentence rather than a two to four year sentence applicable to an aggravated assault conviction (Pen Code Section 245, subd (a), even if the crime was not particularly heinous and the injuries were not particularly substantial. This is not what the voters intended in passing Proposition 115. In my view, a part of our function as a reviewing court is to see that the law is applied in accordance with its purpose and the intent underlying it.

As the majority opinion points out, our review of the Sufficiency of the evidence to support the jury's verdict is limited. However, I disagree with the majority's conclusion that this limitation precludes us from finding that a reasonable trier of fact could not have inferred the requisite specific intent from the circumstances of Pre's attack on Rose. In fact, no existing published case has recognized the crime of torture arising out of conduct similar to what Pre engaged in here. Without minimizing the nature of Pre's attack on Rose and recognizing that Pre's conduct may be viewed as somewhat unusual, I nonetheless conclude that the jury could not reasonably infer that Pre acted with the intent to cause cruel or extreme pain or for revenge, persuasion or any sadistic purpose from his conduct, which was neither "extremely violent and callous," nor comparable to that involved in Singleton. A reasonable juror could not infer from the circumstances surrounding his attack on Rose that Pre intended to inflict cruel or extreme pain. Characterizing Pre's actions against Rose as torture "redefine(s), and minimize(s), the gruesome and sadistic nature of torture, which has long been recognized as among the most heinous of human conduct…" (People v. Jung, supra, 71 Cal.App.4th at p. 1049 (dis. opn. Armstrong, J.)) For these reasons I would reverse Pre's convictions of torture.

The case against Mr. Hamlin may be the best example of the wrongful charging of torture and the miscarriage of justice that can result from a statute which is so overbroad.

A comparison should be made between the legislative intent of Penal Code Section 206 Singleton-type conduct and Mr. Hamlin's case. From the very beginning, the allegations against Mr. Hamlin constituted a spousal abuse and assault case. Even before the jury's verdicts, with the most extreme claims pending, a very strong argument could be made that this was not what the Legislature intended to punish with a life sentence.

However, after the jury's verdicts, there can be no doubt that this is absolutely not a "torture case" as intended by the Legislature.

Let us start from the beginning. Penal Code Section 206 was, as People v. Barrera, supra, stated, intended "to fill a gap in existing law dealing with extremely violent and callous criminal conduct".

The allegations brought against Mr. Hamlin were aptly covered by Penal Code Sections 245, 273.5, and the respective sentencing enhancements. Mr. Hamlin was facing extensive time in prison based on the 17 non-torture counts. Clearly there was not extreme, vicious conduct that was not covered by those Penal Code sections and the sentencing enhancements.

Basically, what the prosecution did was to utilize the overbroad language of Penal Code Section 206, torture, to charge Mr. Hamlin with an offense that covered the same allegations detailed in other counts. The benefit, of course, is that now the prosecution could attempt to expose Mr. Hamlin to life

imprisonment as compared to a lesser determinate sentence mandated by Penal Code Sections 245 and 273.5.

The significance of this strategic filing is that the Legislature never intended for Penal Code Section 206 to be used as a duplicative filing which changes violations of Penal Code Section 245 and 273.5 into life imprisonment offenses. In this case section 206 and sections 245 and 273.5 covered the same allegations.

This leads to the analysis of the significance of the jury's verdicts. The prosecution's specific allegations against Mr. Hamlin were resoundingly rejected by this jury. The miscarriage of justice results when despite Mr. Hamlin's successful defense of specific claims, a jury can convict on Penal Code Section 206, torture, which covered the same allegations as the specific charges, but is defined more vaguely and overly broad.

It is the defense's position that the manner in which Penal Code Section 206, torture, was filed against Mr. Hamlin did not reflect the intent of the Legislature.

Furthermore, and perhaps even more significant is that after the jury's verdicts and findings, the remaining evidence against Mr. Hamlin clearly was not what the Legislature intended to constitute torture.

Mr. Hamlin was found not guilty of inflicting great bodily injury both times it was alleged. Mr. Hamlin was found not

guilty of striking Ms. Hamlin with a pipe and a stick, not guilty of cutting her with a sword, not guilty of beating her while a friend was in the home, not guilty of sleeping with Ms. Hamlin by his side while he held a gun, and not guilty of several other counts as well.

The question then becomes, what did Mr. Hamlin do that constitutes torture?

This Court is left with three counts of spousal abuse without any findings of great bodily injury. That leads us to an essential question: Is that what the Legislature intended when it created Penal Code Section 206?

Clearly the answer is no. Penal Code Section 206, torture, was meant to punish the Larry Singletons of this world. It was meant to punish conduct not covered by other Penal Code sections. It was meant to punish defendants who cut off the hands of a young child or a husband who lights his wife on fire. Thus, the punishment of life in prison. It was not meant to create a life sentence for spousal abuse.

B

MR. HAMLIN'S PERSONAL BACKGROUND AND THE CIRCUMSTANCES OF THE CASE SUPPORT THE COURT'S DECISION TO DISMISS PURSUANT TO PENAL CODE SECTION 1385

Mr. Hamlin's personal background is as follows:

He was born on April 15, 1960, and is now 45 years old. He graduated from McGeorge School of Law in 1985 and was admitted to the California State Bar in June, 1986. He was employed by the Sacramento County District Attorney's Office as a Deputy District Attorney from 1985 through December 31, 1989. He established a criminal defense practice in 1990 and continued in that practice until 2004.

Mr. Hamlin had no criminal record before his arrest in this case and, in fact, had never been arrested prior to his arrest in this case. There had been no sustained complaints against him with the State Bar before his arrest and no formal or informal actions had ever been taken against him as a lawyer.

Mr. Hamlin grew up primarily in the East Los Angeles community of Highland Park. His family was very poor. He began working in the 6th grade with a paper route. He then began working in the 11th grade at Lucky's Supermarket.

High school found Mr. Hamlin to be an average student. Due to his family's economic status he did not believe college was an option. However, a counselor at his high school took an interest in Mr. Hamlin. The counselor's name was Jack Wright. One day, Mr. Wright asked Mr. Hamlin a very simple question: if he could do anything in the world, what would he want to be? Mr. Hamlin thought the question was stupid because of his economic and social status. But Mr. Wright kept pushing Mr. Hamlin for an answer, so Mr. Hamlin told him---if he could be

anything in the world it would be an Attorney. Mr. Wright told young Mr. Hamlin to mark that day. Mr. Wright took Mr. Hamlin to different college campuses and showed him how to apply for financial aid and scholarships.

Thanks to Jack Wright, Richard Hamlin actually believed he could do it.

Mr. Hamlin was accepted to California Lutheran College in Thousand Oaks, California, and experienced four of the best years of his life there. He was a C+ student in high school, but graduated from CLC with honors. He received only two C grades during his entire four years of school. At CLC he was involved in student government and campus ministries, and was captain of the school's debate team.

He put himself through his entire four years of college by working, receiving aid, receiving scholarships, and student awards. He received no financial help from his family.

His family life was not good as a child and young adult. His mother was an extreme alcoholic. She often would start drinking early in the morning and not stop until she passed out. Drinking really affected her moods. When sober she was a very caring mother figure, but when drunk she would be very rejecting and angry.

Mr. Hamlin's mom died when he was 18 years old, during his first year of college. Her death was due to kidney and liver

failure because of her extreme alcoholism. She was 38 when she died.

His dad was not around much in his childhood. As a result, as the oldest child he was left to deal with many of the family's problems, his mom's alcoholism, and their poor financial status. His dad was very inconsistent and not a real presence in Mr. Hamlin's life. During the 9th grade Mr. Hamlin's dad was sentenced to eight months in a work furlough program for a fraud case. During that time Mr. Hamlin had to be the sole head of the house.

After his mom died when he was 18, his dad moved to England a couple of years later, where he lives to this day. That move happened when Mr. Hamlin was 21 years old. He has seen his dad just a handful of times in the approximately 25 years that have passed since he moved.

After graduating from Cal Lutheran in 1982, Mr. Hamlin immediately began at McGeorge School of Law. He was involved in student government, the Jessup and Mock Trial teams, and was president of the Christian Legal Society. He also put himself through law school with financial assistance from his aunt.

During his time at the Sacramento County District Attorney's Office, he received two written commendations from John Dougherty, the elected District Attorney. When Mr. Hamlin left the District Attorney's Office he was part of the Career Criminal Special Prosecution Unit.

During the time in his own law practice, he grew financially every year until 2001. He represented three members associated with Governor Pete Wilson's administration. He was invited to and attended Governor Wilson's second inaugural.

Mr. Hamlin has a brother, Brad, who is married to Nicky. They have five children. Richard Hamlin and his brother are now very close and Brad has been a constant presence in Richard's life throughout this entire 2 year ordeal. Brad served as a legal runner for Mr. Hamlin during the court process.

Mr. Hamlin is most proud of raising four beautiful children. Some of Mr. Hamlin's fondest memories resulted from when they traveled on vacations throughout the United States. Mr. Hamlin has coached his son's Little League baseball team, encouraged his children's participation in sports, and loved to play games and watch movies with all his children. They had wonderful Christmas times together.

In addition to background presented of Mr. Hamlin before his arrest, the defense would ask this Court to examine his conduct since his arrest.

Mr. Hamlin has for the first time in his life spent time in jail. As of the time of this motion he has spent more than two years and two months in custody. During that time he has complied with all rules and regulations of the jail and has not received any write-ups or discipline during his time in custody.

Mr. Hamlin has, in fact, used the time in custody in a way to better and improve himself.

According to jail records (see attached exhibit 2), Mr. Hamlin has attended:

Church services	76 times
Free On The Inside (a church-related program)	36 times
A.A./N.A. meetings	23 times
Celebrate Recovery	39 times

Mr. Hamlin has utilized his time to strengthen and deepen his faith so that he may be a better and more consistent person upon his release. Mr. Hamlin has acknowledged that he has made mistakes and it is his desire to correct them and change the way he lives. Mr. Hamlin readily acknowledges that he was much too inconsistent in his Christian beliefs and is working hard to live his beliefs consistently every day. Celebrate Recovery has worked extremely well for him. This is a Christian-based recovery group that applies the 12-step program to everyday living. Mr. Hamlin has really connected with their philosophy and has been able to apply it to his daily walk.

As a part of his growth, he and other inmates have begun a daily Bible study in his pod. It meets twice a day and has grown from 2 of them to 12-14 people.

It is hoped that this Court will also take notice of Mr. Hamlin's conduct throughout his trial. Consistent with his behavior in the jail despite the enormous amount of stress that he has been under, Mr. Hamlin conducted himself in trial respectfully without any outbursts. Despite the stress of trial and in the presence of his accuser, Mr. Hamlin maintained a professional demeanor and was in control of his emotions.

The significance is that Mr. Hamlin has been in situations that would clearly test anger management or impulse control problems and he has not stumbled.

In addition to the classes that Mr. Hamlin has attended, he has done a significant amount of self-help through reading and workbooks. During and after Mr. Hamlin's family court proceedings, he has gone above and beyond what was required in an effort to improve as a parent.

Mr. Hamlin has completed the following:

1. Father, Son, 3 Mile — 128 pages

   Completed a 1 page book report

2. Between Parent & Teenager — 255 pages

   Completed a 4 page book report

3. Learning to Live Without Violence — 128 pages

   Completed the workbook and wrote a 22 page book report

4. Came To Believe — AA book — 120 pages

5. Living Sober — 88 pages

6. 12 Steps & 12 Traditions 192 pages

7. Alcoholics/Anonymous 575 pages

8. Pathway To Sobriety 244 pages

Completed a very lengthy workbook

9. It Will Never Happen To Me 183 pages

Completed a 2 page report

10. The Adult Children of Alcoholics Syndrome 159 pages

Completed a 2 ½ page book report

11. A.A. in Prison/Inmate to Inmate 127 pages

Completed a 1 page book report

12. Parents Handbook 133 pages

Completed the workbook

13. Completed "Overcoming Anger" pamphlet

14. Read "Making Quality Time With Kids" article

15. Read "Parent Talk" pamphlet

16. Wrote report on Health Child TV segment "Child And Sleep"

Additionally, the defense has included characters letters for Mr. Hamlin.

In looking at Mr. Hamlin's background and his conduct after his arrest, this Court should see a consistency of good behavior that is not a risk to society or others.

Before Mr. Hamlin was arrested on February 28, 2004, he had lived nearly 44 years without an arrest as a juvenile or as an

adult. Mr. Hamlin had practiced law with distinction and without a sustained complaint or any reprimand for nearly 18 years.

After Mr. Hamlin's arrest, he has obeyed all jail rules and regulations, been in control during court and trial appearances and has utilized his time in custody to better himself, correct mistakes, and attempt to help other inmates.

This Court should look to the exceptionally unusual circumstances that surrounded Mr. Hamlin's conduct that led to his convictions. Mr. Hamlin was told by his wife of horrific child rape and molestation of her by her father. Mr. Hamlin was then told of the molestation of his children by Ms. Hamlin and her father. Mr. Hamlin was told of a plan to hurt him and to take his children. Mr. Hamlin believed these things.

It is hard to imagine the pressure and pain that anyone would feel upon hearing these things. Mr. Hamlin admitted to making mistakes while under that pressure, pressure that was absolutely extraordinary.

Mr. Hamlin's conduct before and after this incident seems to reflect someone deserving of a second opportunity. As the next section will explain to this Court, there are still significant sentencing options available for a first offender if this Court exercises its discretion and dismisses Count I, Penal Code Section 206, torture.

Given the circumstances surrounding Mr. Hamlin's background and the circumstances surrounding this case a life sentence is not in the furtherance of justice.

C

EVEN IF THIS COURT DISMISSES COUNT I, TORTURE, THIS COURT CAN PUNISH MR. HAMLIN SUFFICIENTLY WHILE PROTECTING SOCIETY AND AVOIDING AN EXCESSIVE PENALTY

Case law has directed the court to consider a defendant's punishment in light of a dismissal pursuant to Penal Code Section 1385.

"This section is the proper vehicle for granting leniency where a defendant has been convicted of multiple offenses arising from an indivisible course of conduct and the trial court has a legitimate reason to punish the defendant for a less, rather than more, serious offense." (People v. Superior Court (Himmelsbach) (1986) 186 Cal.App.3d 524.)

"A defendant's sentence is the overarching consideration when deciding whether to dismiss a prior felony "strike" allegation under the Three Strikes law because the underlying purpose of dismissing prior conviction allegations is the avoidance of unjust sentences." (People v. Gaston (1999) 74 Cal.App.4th 310.)

"A defendant's sentence with respect to other counts is relevant when deciding whether to strike a prior conviction

allegation for purposes of the Three Strikes law with respect to the remaining counts, because the overarching purpose of striking prior conviction allegations is the avoidance of unjust sentences." (People v. Garcia (1999) 20 Cal.4th 490.)

One of the first things this Court should do is acknowledge the significant punishment Mr. Hamlin has already suffered. Mr. Hamlin had never been arrested, let alone spent time in jail. With that said, Mr. Hamlin has been in jail for more than two years. His confinement has been a stinging, shocking punishment and truly an eye-opening experience.

Being in jail has had other extreme consequences for Mr. Hamlin as well. He has lost everything. It has been more than two years since Mr. Hamlin has been able to have contact with his children, and that has been the most painful loss of all. He has lost all of his personal property, which has been taken by his former wife. The Hamlin dream home was forced to be sold. He has absolutely no money, no possessions, and now no profession.

On February 27, 2006, Mr. Hamlin resigned from the California State Bar, giving up his ability to practice law. Next to the loss of his children, there has been nothing more painful.

Due to the convictions rendered in this case, Mr. Hamlin was forced to give up his profession, his dream. This additional punishment is something beyond what most other

defendants suffer. Being a lawyer was something he thought impossible until given encouragement by a high school counselor. Mr. Hamlin's most proud accomplishment, having become a lawyer who hailed from East Los Angeles, is now gone.

Additionally, due to Mr. Hamlin's former position as a deputy district attorney, he faces a significant threat of harm from other inmates. In fact, Mr. Hamlin is in protective custody due to a threat made by another inmate to kill Mr. Hamlin because of his former position.

If this Court dismissed Count I, it could still further punish Mr. Hamlin significantly. With the other convictions remaining, this Court could sentence Mr. Hamlin to 9 years, 8 months, of which 6 years, 8 months could be spent in state prison.

Alternatively, the defense would be willing to stipulate to a sentence in which Mr. Hamlin would be sentenced to county jail and a maximum period of probation with the life sentence suspended and available if Mr. Hamlin violated his second chance.

IV

CONCLUSION

Penal Code Section 1385 gives this Court the ability to achieve justice. It gives this Court the ability to get the right resolution. The insufficiency of the evidence to sustain

the torture conviction, the fact that this case is not what the Legislature intended when it created the crime of torture, Mr. Hamlin's background and circumstances surrounding the offenses and this Court's ability to punish even if the torture count is dismissed, are all factors that call out for this Court to dismiss Count I, Penal Code Section 206, torture.

Sentencing Mr. Hamlin to life in prison would be a travesty of justice. Dismissing the torture count prevents a sentence of life in prison and would be a "furtherance of justice".

Dated: March 28, 2006.

Respectfully submitted,

Robert Banning

ROBERT BANNING
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